

State of California
Regional Water Quality Control Board
San Diego Region

SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
Wednesday, January 24, 2007

ITEM: 11 (Time Certain Item: 10:30 AM)

SUBJECT: Consideration of adoption of the San Diego County Municipal Storm Water Permit, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (NPDES Permit No. CAS0108758). A public hearing for this item was held June 21, 2006: Oral comments will be accepted on modifications to the Tentative Order that have been made following the public hearing. Time allotted for oral comments may be limited at the discretion of the Regional Board. (**Tentative Order No. R9-2007-0001**, previously Tentative Order No. R9-2006-0011) (*Phil Hammer*)

DISCUSSION: The cancellation of the December 13, 2006 Regional Board meeting provided the Regional Board with the opportunity to receive additional input on the Tentative Order from interested parties. Specifically, comments were solicited on those sections of the Tentative Order that included modifications made in response to comments received on October 30, 2006. Comments on those modifications had not previously been solicited.

This latest round of written comments, received after cancellation of the December 13, 2006 Regional Board meeting, has been responded to in the Responses to Comments III document attached (Supporting Document # 3). Where appropriate, final modifications to the Tentative Order have been made in response to these most recent comments. The modifications do not constitute the addition of new requirements, or deletion of pre-existing

requirements; rather, the modifications clarify and organize the requirements so that they will be more easily understood and implemented. The most recent version of the Tentative Order, which includes these modifications in underline-strikeout format, is provided as Supporting Document # 1. This is the document to be considered for adoption.

The majority of the most recent comments received focused on the issue of the Tentative Order's low-impact development (LID) requirements. As a result, the LID requirements have evolved since the cancellation of the December 13, 2006 Regional Board meeting. For this reason, an update on the issue of the Tentative Order's LID requirements is provided below in this Supplemental Executive Officer Summary Report.

LID is defined as a storm water management and land development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development hydrologic functions. By promoting infiltration, LID is an effective means for managing urban runoff and its associated impacts.

In its review of the December 13, 2006 version of the Tentative Order, the Natural Resources Defense Council contended that the Tentative Order's LID requirements were not specific enough, and would possibly allow for relatively low levels of LID implementation which would not meet the maximum extent practicable standard. On the other hand, some Copermittees and building industry groups were concerned about a perceived lack of flexibility in the LID requirements. In addition, the Copermittees as a group requested additional time to be able to collaborate in the development of criteria to be used in applying the LID requirements to Priority Development Projects. Various categories of development projects that have the potential to generate high levels of pollutants are identified as Priority Development Projects in the Tentative Order.

The most recent version of Tentative Order dated January 24, 2007 addresses the interested parties' divergent views of the LID requirements. The Tentative Order includes minimum LID requirements which ensure a high level of LID implementation, while providing a flexible framework for the Copermittees to develop specific criteria to be used in implementing the requirements.

A high level of LID implementation, consistent with the maximum extent practicable standard, is ensured in the Tentative Order through the application of numerous LID requirements. Each Priority Development Project must implement LID best management practices (BMPs) that will "collectively minimize directly connected impervious surfaces and promote infiltration." This serves as a standard to guide the Copermittees' LID programs. To support this standard, the Tentative Order includes LID requirements for all Priority Development Projects with pervious and/or low-traffic areas. Priority Development Projects with pervious areas must use those areas for infiltration of runoff from impervious areas. Moreover, the amount of runoff to be infiltrated must correspond with the pervious areas' capacity for infiltration, ensuring full use of infiltration opportunities. Likewise, Priority Development Projects with low-traffic areas must construct a portion of those areas with permeable surfaces when conditions allow, further improving infiltration on site. After these LID BMPs have been used to reduce the volume of runoff through infiltration, remaining runoff is required to be treated by BMPs that must incorporate LID techniques where possible.

On their own, the LID BMP requirements discussed above ensure a high level of LID BMP implementation, as necessary to meet the maximum extent practicable standard. However, the Tentative Order includes an additional suite of LID BMPs which must be implemented at Priority Development Projects where applicable and feasible. To ensure that applicability and feasibility determinations are appropriate, the Copermittees are required to develop criteria to be used to determine the conditions under

which each of these LID BMPs is applicable and feasible.

While these requirements ensure a high level of LID BMP implementation, they also provide flexibility in how LID BMPs are implemented. Location and design of LID BMPs is to be developed by Priority Development Project proponents and the Copermittees. In addition, specific LID requirements only need apply to those Priority Development Projects with appropriate project conditions. Moreover, the extent of LID BMP implementation at Priority Development Projects can match the conditions of the projects as well. The Copermittees are also provided discretion in developing criteria to determine the applicability and feasibility of implementing LID BMPs at particular Priority Development Projects.

To aid in the development and implementation of the LID requirements, the Tentative Order also provides the Copermittees with a framework for developing criteria to be used in the application of the LID requirements to Priority Development Projects. The Copermittees are to develop their LID programs through an update to the Model Standard Urban Storm Water Mitigation Plan, which is a document that guides post-construction BMP implementation at Priority Development Projects. This will provide the Copermittees with the time necessary to develop and implement a thorough and effective program which takes into account the particular conditions of San Diego County.

This approach of requiring LID BMP implementation, while providing flexibility as to how compliance is achieved, is consistent with the approach taken throughout the Tentative Order. It ensures that the maximum extent practicable standard will be met, while also allowing the Copermittees to tailor their programs as necessary to a wide range of conditions. As such, it is an appropriate approach for requiring LID BMP implementation in the Tentative Order.

While comments on the Tentative Order's LID requirements have been numerous during this latest

round of comments and responses, comments and subsequent modifications addressing other sections of the Tentative Order have been minimal. Therefore, the remaining key issues that have previously been identified have not changed. These key issues are identified in the Executive Officer Summary Report for the December 13, 2006 Regional Board meeting, and are discussed in detail in Supporting Document # 7 of that agenda package. It is worth noting, however, that these remaining key issues represent a small fraction of the issues that have been raised during the entire reissuance process. The majority of the issues that have previously been raised have largely been resolved.

SUPPORTING
DOCUMENTS:

In addition to the Supporting Documents provided with the Executive Officer Summary Report, as well as the Supporting Documents provided in the agenda package for the canceled December 13, 2006 Regional Board meeting, the following Supporting Documents are provided here:

1. Tentative Order No. R9-2007-0001 dated January 24, 2007. This is the most up to date version of the Tentative Order. This is the document to be considered for adoption. It is the proposed renewal of Order No. 2001-01. It has been modified in response to three rounds of comments. Modifications made in response to the latest comments, received following cancellation of the December 13, 2006 Regional Board meeting, are found in underline-strikeout format.
2. Fact Sheet/Technical Report for Tentative Order No. R9-2007-0001 dated January 24, 2007. A comprehensive document providing background information and justification for the Tentative Order. It has been modified from its original March 10, 2006 version to include legal authority citations. Modifications made following the June 21, 2006 public hearing are found in underline-strikeout format.
3. Responses to Comments III. A document responding to the third round of comments received on the Tentative Order.

4. Additional Written Comments from Copermitees and Interested Parties. Additional written comments received from interested parties.