



CITY OF ORANGE

CITY MANAGER

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February 12, 2015

Mr. Adam Fischer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Subject: MS4 NPDES Permit Draft Order No. R8-2015-0001

Dear Mr. Fischer:

As an Orange County Co-permittee affected by Order No. R8-2015-0001, the City of Orange would like to take this opportunity to comment on the proposed Order. The City previously commented on the first draft and appreciates the number of changes made to improve the Order. However, not all issues have been resolved and there are still a number of issues of concern to the City. A short summary of those issues is provided in the following paragraphs and a complete write-up is provided in the attachment to this letter. The City would also like to acknowledge the County of Orange's letter, which provides an in depth analysis and proposed redline changes to the Order, which are supported by the City.

The City continues to be concerned with the omission of the Drainage Area Management Plan (DAMP) and Local Implementation Plan (LIP), which contain the City's and Co-permittees' established model programs. These are important documents that are not recognized in the Order. The Model WQMP and Technical Guidance Document, which serve as the guidance documents to comply with the new development/significant redevelopment program requirements are acknowledged and referenced in a footnote but not explicitly cited in any provision. We recognize the need to allow Co-permittees the flexibility to develop individual programs but believe linking the existing documents and simply adding new requirements would have made the Order simpler.

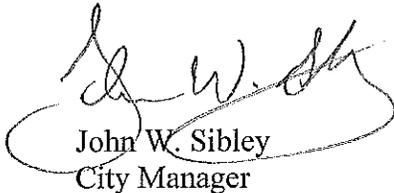
Another major concern with the Order is that not enough time is allowed to incorporate the new requirements of Section XII - New Development/Significant Redevelopment. Section XII states that all requirements listed under the section apply 50 days following adoption of the Order. The implication is that a program that complies with Section XII's requirements must be in place within 50 days.

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To comply with this requirement the City and Co-permittees approved model programs will need to be revised as well as the countywide Model WQMP and Technical Guidance Document. Given the time required to update and approve these documents, 50 days is simply not enough time to develop and incorporate the Order's new Section XII requirements.

These and other issues are discussed in the attachment to this letter. Questions regarding these comments may be directed to Gene Estrada at 714-744-5547.

Sincerely,



John W. Sibley
City Manager

Attachment

cc: Joe DeFrancesco, Public Works Director
Frank Sun, Deputy Director/City Engineer
Chris Crompton, Manager, Public Works Environmental Resources
Hope Smythe, Santa Ana Region Water Quality Control Board

**Attachment
Draft Order R8-2015-0001 Comments**

1. Section III.A - Irrigation Runoff

Table 2 of Section III.A has been revised and no longer exempts irrigation water as a non-storm water discharge as allowed by federal regulations.

The City recognizes the need to conserve water and reduce irrigation runoff. However, before completely prohibiting irrigation water runoff, factual findings must be presented in the Findings section of the Order that identifies irrigation water as an actual pollutant source that causes impairment in local water bodies.

Completely prohibiting irrigation water from running onto the street gutter is problematic even when employing best watering practices. Using a hose for lawn watering is one of the best practices available that allows the control of water applied yet may still result in residual runoff, which would be a violation of the Order. Other lawn watering practices implementing controllers or other devices that may also result in minimal or residual runoff into the gutter would be a violation of the Order even if the water evaporates or never makes it to storm drain as would irrigation spray carried into the gutter by wind.

Recommendation: Do not remove irrigation water from the permitted non-storm water discharges in Table 2.

2. Section XII.M - Non-Priority Project Plans

Designating Non-Priority Projects

The City's comments noted the concern with the previous draft Order requiring non-priority project plans for projects simply because *they were exposed to storm water*. It was noted that this requirement was overly broad and would result in a virtual halt of the issuance of over the counter building permits because non-priority project plans would now be required for simple projects such as reroofs, walls, solar panels, patio covers, and many other projects. In addition, the provisions would also result in increased project costs of hundreds to thousands of dollars.

The draft Order has been revised and now classifies projects as non-priority projects if they are *exposed to storm water and may be considered sources of pollution*. An attempt has been made to link non-priority projects with their potential to discharge pollutants. The concern with the proposed language is that any outdoor project may be considered to be a source of pollutants if rainfall flows off it and the runoff is carried into the storm drain system. This provision will only lead to confusion about designating which type of projects are non-priority projects and create permitting obstacles in addition to increasing projects costs without achieving any measurable pollutant

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reduction because non-priority projects are not considered significant sources of pollutants.

Recommendation: Delete Section XII.M.1

XII.M.5 Civil Engineer Approval of Non-Priority Project Plans

The City previously commented that the new requirement to have registered civil engineers or licensed architects approve non-priority project plans or WQMPs, as they are referred to in Orange, was unnecessary unless structural treatment devices were incorporated into the project design.

The response to the City's comment noted in the Response to Comments interprets provision M.5. to mean that a registered civil engineer or licensed landscape architect does not need to prepare the plan but that *someone acting on behalf of the City* who approves the non-priority project plan either as staff or through a consultant must be a registered professional.

It is not clear why this requirement is placed on the Co-permittees. Applicants that prepare non-priority project plans should be responsible for selecting individuals or professionals to prepare project documents based on the level of complexity involved. If a non-priority project only implements source controls or site design BMPs that do not require extensive technical knowledge by the preparer, there is no reason to require a registered professional to review the non-priority project plan. This is simply an unnecessary administrative burden placed on the City and Co-permittees.

Where a non-priority project plan includes structural treatment devices that involve hydrological processes or require technical expertise for their design, it is the City's expectation that the non-priority project plan will be prepared by someone with the required technical expertise. Such a plan would be reviewed internally within the City by someone equally capable. However, it is not necessary to include a provision requiring the City to select certain individuals to review and approve non-priority project plans. The selection to review and approve documents submitted to the City should be left to the City.

Recommendation: Delete or modify provision XII.M.5 to require registered professionals to prepare non-priority project plans only if they include features that require design expertise from registered professionals.

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3. Section XII. – Timing of New Development Requirements on Public Projects

Paragraph XII.B.1 (old designation), states that the new development/significant redevelopment requirements of Section XII apply to Co-permittee initiated projects (public projects) *approved* 50 days after adoption of the Order.

The City appreciates the attempt to clarify the timing of applicability of the new development/significant requirements for public projects. It is recognized that selecting an appropriate time frame to commence implementation of new requirements on public projects is difficult due to timing differences between agencies and the complex processes involved in implementing public projects. However, there are concerns with the word *approved*.

It is clear from the Order that Section XII's requirements do not apply to private projects if an application has been submitted to the City within the first 50 days after the Order's adoption. This submittal usually contains the initial or conceptual design of the project. Therefore, it seems only reasonable that public projects would need to implement new development requirements at the same project stage as private projects.

The previous draft Order stated that the new development requirements did not apply to public projects if the project was *funded* within 50 days of adoption of the Order. This was problematic because funding could occur at various stages within a project. It is possible that *funding* could be given very early in the process prior to commencement of design if it was a highly visible project. It is also possible that *funding* could occur late in the project process prior to solicitation of bids. In the latter case, the project has been designed and if it had not been funded within the 50 days of the Order's adoption, the project would have had to incorporate the new Order's requirements.

Revising the Order's language to *approved* raises similar concerns with the implementation of the new development requirements. Again, it is possible that a highly visible project obtains *approval* to proceed prior to commencement of design. It is also possible that *approval* of a project does not occur until it is ready for bid solicitation, which could be well after the 50 days of the Order's adoption.

A preferable option is to replace *funding* with *design*. This would allow existing projects that are currently under design but may not be formally approved within 50 days of the Order's adoption to implement the requirements of the existing Order.

Recommendation: Revised Section XII. B to state that the new Order requirements do not apply to Co-permittee initiated projects that under design within 50 days of the Order's adoption.

**Attachment
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4. Section XII - Time to Implement New Development Requirements

As noted above, Section XII of the Draft Order states that all new development/significant redevelopment requirements apply 50 days following adoption of the Order. This section has been significantly revised and contains many new requirements that are not currently in Co-permittee approved documents. This includes: potential new categories of non-priority projects, new criteria for demonstration facilities, changes to the use of water quality credits, the sizing of volume capturing biotreatment BMPs, retrofitting existing development and updates to the rating of structural treatment BMPs.

These new program requirements will need to be incorporated into existing model programs, the Model WQMP, Technical Guidance Document and the City's Water Quality Ordinance. The Model WQMP and TGD previously needed to undergo public review and approval by the regional board executive officer. The water quality ordinance needs to be approved by city council. Given the time required to update and approve these documents, 50 days is simply not enough time to develop and incorporate the Order's new program requirements into these documents.

Recommendation: Revise the Order to state that the new development/significant redevelopment requirements begin 12 months following the Order's adoption.

5. Section XIV - Written Inspection and Maintenance Schedules for Municipal Facilities

Paragraph XIV.C requires each Co-Permittee to prepare a written inspection and maintenance schedule for each facility subject to the requirements of Section XIV.C.

Preparing reports for facilities such as channels, which encompass large areas, makes sense but does not make sense for small facilities like catch basins and storm drain inlets. Within Orange there are 1800 catch basins and 185 storm drain inlets as reported in our November 15, 2014 Annual Report. Each catch basin and inlet is inspected in a matter of minutes: the time it takes to visually inspect these facilities. Preparing a report for each catch basin and inlet is unnecessary and will result in unnecessary resource expenditures and costs for an effort that is not likely to provide any meaningful information beyond identifying the need to clean or restencil catch basins, which is already recorded and reported in the City's Annual Report.

Recommendation: Modify the following sentence of XIV.C as noted below.

Each Co-permittee must prepare a maintenance schedule for the facilities subject to this requirement.