UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 13, 2015

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

Re: Tentative Order/Draft MS4 Permit for Orange County and Co-Permittees (NPDES Permit No. CAS618030)

Dear Mr. Fischer:

Thank you for the opportunity to review and comment on the revised tentative order/draft permit (Order No. R8-2015-0001/NPDES Permit No. CAS618030) for discharges from the municipal separate storm sewer system (MS4) serving Orange County and co-permittees therein within jurisdiction of Santa Ana Regional Water Quality Control Board (Regional Board). We provided comments on the initial public draft (dated May 2, 2014) and we appreciate the Regional Board incorporating most of our recommendations in this revised draft, specifically in the areas of receiving water limits, TMDLs and water quality based effluent limits, toxicity statistical approaches, outfall monitoring, and the opportunity for public comment on the permittees' forthcoming monitoring program. As presented below, we have continued concerns about certain aspects of new and redevelopment requirements, along with two minor recommendations.

A. New and Redevelopment requirements

A few provisions in Section XII, New Development (including Significant Redevelopment), should be revised to clarify the expectations for controls at priority projects. While we generally agree that in most cases first priority consideration should be onsite "retention LID BMPs," we'd recommend that Section XII.F. be revised to enable compliance via offsite projects if water quality protections are in place at the site of the priority project and it's clear that the offsite projects will provide water quality benefits equal to or greater than onsite controls. Both the San Diego Regional MS4 permit and the Los Angeles County MS4 permit provide useful models for how this may be achieved. For example, the San Diego Regional MS4 permit (section E.3.c.1.b) states that alternative compliance (such as an offsite projects) may be utilized to comply with stormwater BMP requirements applicable to priority development projects. This permit specifies that in these situations, flow-through treatment control BMPs must be used to treat the portion of the design capture volume not reliably retained onsite. The San Diego permit also provides specific design expectations for these flow-through treatment controls. The LA County MS4 permit provides a similar avenue for implementing offsite

projects where there is a greater opportunity to replenish groundwater supplies at an offsite location. The LA County permit includes Water Quality Mitigation Criteria (VI.D.7.c.iii.7) that must be met when compliance with New Development and Redevelopment provisions is achieved via the implementation of offsite projects.

Section XII.H. of the draft permit lists the third priority for addressing development projects as the use of non-LID BMPs, if neither onsite retention LID BMPs nor biotreatment BMPs are feasible. This provision should be revised to make it clear that in these circumstances an offsite retention project or some other alternative means of compliance must also be implemented in addition to implementing non-LID BMPs. Such as revision would be consistent with the MS4 permits in place for neighboring counties. In the San Diego Regional MS4 permit (E.3.c.1.a.ii), in these circumstances it's necessary to use flow-through treatment controls in addition to mitigating for the design capture volume not retained onsite via an alternative compliance project (including offsite projects). In the LA County MS4 permit (VI.D.7.c.iii) if it's not technically feasible to retain or biofilter the required storm volume, projects must implement offsite infiltration, groundwater replenishment or offsite retrofits in order to comply.
Section XII.K of the draft permit describes provisions for off-site projects. As noted above, we support the use of off-site projects in some circumstances, however the permit should be modified to explicitly state the performance expectations for offsite projects, including that they will result in achievement of equivalent water quality benefits to the implementation of onsite retention LID BMPs. Again, the San Diego Regional and LA County MS4 permits make this clear. The San Diego Regional MS4 permit (2013) states that priority development projects must mitigate for the portion of the design capture volume not retained onsite (E.3.c.1.b). On February 11, 2015, the San Diego Board amended the 2013 permit to include south Orange County and its co-permittees and it now requires the acceptance of Water Quality Equivalency calculations (E.3.c.3.a) for alternative compliance projects. The Los Angeles MS4 permit (IV.D.7.c.iii) clearly specifies the volume of stormwater runoff that must be controlled by offsite projects.

We recognize that in response to our June 20, 2104 comments, the hierarchy of treatment control BMPs was modified by adding section XII.I, allowing for compliance via retrofitting existing development. While we agree that it's a good idea to specify that off-site stormwater retention projects implemented to comply with the permit may include retrofits, this wasn't what we were suggesting in our 6/20/14 comments. Our recommendation regarding retrofits is that the permit should be modified to require the identification of candidates for retrofitting within existing development areas covered by the permit, not just areas "owned or controlled by the Co-permittees." (Section XII.A.3) In the San Diego Regional MS4 permit each permittee must identify retrofit priorities within existing development. These strategies will identify developed areas where retrofitting will address pollutants that contribute to the highest priority water quality problems. It's recognized that retrofits aren't always feasible, but we believe the San Diego Regional MS4 permit's approach should be applied to the portion of Orange County in the Santa Ana Regional Board's jurisdiction. Also, the LA County MS4 permit (VI.D.9.d) requires the preparation of an inventory of retrofit opportunities within existing development, including prioritizing these opportunities and coordinating with private landowners.

B. Total Maximum Daily Load (TMDL) Requirements

Appendix C of this permit should be modified to be consistent with compliance deadlines provided within the Fecal Coliform TMDL in Newport Bay Watershed. Final permit Tables C-1 and C-2 should match dates included in Table 5-9f in Attachment to Regional Board Resolution 99-10.)

C. Monitoring Program

We appreciate the inclusion of neonicotinoides within the monitoring program; however, we reiterate our recommendation to include a broader suite of current use pesticides, specifically pyrethroids (e.g., bifenthrin, cyfluthrin, cypermithrin, esfenvalerate, fipronil, lambda-cyhalothrin, permithrin), which may have been inadvertently omitted. Pyrethroids are both widely used in urban areas and shown to be associated with toxicity in surface waters. (See Weston et al., *Aquatic Toxicity Due to Residential Use of Pyrethroid Insecticides*, Env. Science & Tech. 2005 and Ruby, *Review of Pyrethroid, Fipronil and Toxicity Monitoring Data from California Urban Watersheds*, CASQA report, 2013).

We appreciate the opportunity to provide our views on the revised draft permit. If you have any questions regarding this matter, please contact either Eugene Bromley at (415) 972-3510 or Peter Kozelka of the NPDES Permits Office at (415) 972-3448.

Sincerely,

Eugene Bromley

for David Smith, Manager
NPDES Permits Office (WTR 2-3)