

ITEM 12 (Response to Comments)
APRIL 22, 2011

Orange County MS4 – Water Quality Management Plan/Technical Guidance Document

As of 4/25/11, written comments were received from the following:

1. USEPA
2. Orange County Water District (OCWD)
3. Orange County Sanitation District (OCSD)
4. Orange County Business Council
5. Municipal Water District of Orange County (MWDOC)
6. State of California, Department of Toxic Substances Control (DTSC)
7. City of Orange
8. Orange County Coastkeeper (OCC)
9. NRDC
10. Orange County Public Works (OCPW)

Most of the following comments were discussed at the public hearing on April 22, 2011 and Regional Board staff provided oral responses at that time. Some of the written comments were provided either at the public hearing or afterwards. Here is a summary of those comments. (The comments are paraphrased and similar comments are grouped together):

1. Comment: Regional/Sub-Regional Projects are described in a manner inconsistent with the Permit. (USEPA, NRDC and Coastkeeper)

Response: The Permit has an established hierarchy with the highest priority for onsite LID BMPs. It requires a feasibility analysis before participation in any regional projects. The watershed-based plans should provide equivalent or better water quality benefits and should be approved by the Executive Officer. The WQMP language has been revised to be consistent with the Permit requirements; e.g., see Errata Item 7.

2. Comment: Regional Maps should not be the only basis for determining infeasibility. (NRDC)

Response: The WQMP only proposes to use the regional maps as a screening device in limited circumstances, mostly for small projects as defined in Table VII.2. of the TGD Appendix VII. The Permittee's assessment is that it will be a "rare case where no additional information is available" (OCPW comment letter, April 22, 2011). In order to clarify this

position and validate the County's assessment, Errata Item 23 has been added.

- 3. Comment: Water Quality Credits should not be applied to treatment control BMPs and treatment control BMPs are required for any portion of the design capture volume that is not retained onsite.** (USEPA, NRDC and Coastkeeper)

Response: Water Quality Credits for treatment control BMPs have been deleted; see e.g., Errata Items 13 and 14.

- 4. Comment: Details of Water Quality Credits are left out, it is overly broad and a specific project could get multiple water quality credits under the scheme discussed in the WQMP.** (USEPA, NRDC and Coastkeeper)

Response: The water quality credits can only be considered after a determination of infeasibility for onsite LID BMPs and biotreatment. Further definitions and explanations for the types of projects discussed in the WQMP for the water quality credit system can be found in local development plans and codes and/or other published sources (e.g., see <http://streetsblog.net/2010/10/18/is-it-time-for-a-certification-system-for-transit-oriented-development/>). Regional Board staff believes that these terms are already well defined within the land-use planning profession; further definition of these terms is unwarranted and may create conflicts with local development plans. Even though water quality credits are additive, a project is limited to a maximum credit of 50%. See Errata Item 11 for further clarifications.

- 5. Comment: The presence of fill material should not be a valid reason for ruling out the use of infiltration. The infiltration cutoff rates are questionable.** (USEPA, NRDC and Coastkeeper)

Response: From a scientific and technical perspective, fill material could pose a challenge to determining accurate percolation rates prior to completion of fill activities and compaction (most preliminary or conceptual WQMPs are to be prepared in the initial stages of a project). However, we agree that the presence of fill material alone should not be a valid reason to rule out infiltration. The infiltration cutoff rate is the most permissive rate found during the permittees' representative's review of published literature. Also see comment 17, below.

- 6. Comment: Biofiltration systems should be designed to meet the LID design criteria.** (USEPA, NRDC and Coastkeeper)

Response: We agree. The WQMP/TGD requires that biotreatment BMPs

be designed to achieve the maximum feasible infiltration and evapotranspiration. See Item 28 of the Errata.

7. The 40% threshold incremental benefit criterion should not be a component of LID implementation. (USEPA, NRDC and Coastkeeper)

Response: The Permit requires that a robust infeasibility analysis be completed if onsite LID is not being implemented. Cost could be an element of the infeasibility analysis. The proposed criterion is based on a comparison of the percent capture volume of LID BMPs for a given site with the average percent capture volume of biotreatment BMPs. The criterion rests on the principle that if a LID BMP is unable to achieve the average percent capture volume of biotreatment BMPs (40%), then the performance of the BMP system would not be improved by limiting the proponent to the use of LID BMPs. LID BMPs are not precluded by this criterion but biotreatment BMPs should be allowed. This is because, based on the criterion, the performance of the BMP system, in terms of the percent capture volume, would not suffer by allowing biotreatment BMPs if the LID BMPs performed significantly less than 40%. We can find no reason to object to this line of reasoning. Nonetheless, further changes have been made in Errata Items No. 56, 57 and 58 to clarify this rationale and promote the proper use of the criterion.

8. Comment: Infiltration in areas that are not identified as "Brownfields" in the WQMP could also adversely impact groundwater quality if unidentified problems exist at the site. (DTSC and OCWD)

Response: Each site will be evaluated on a case-by-case basis for suitability of infiltration and/or other LID BMPs. The MWQMP outlines a general process for evaluations.

9. Comment: OCWD and MWDOC support the March 22, 2011 draft WQMP/TGD and would like to promote well designed and managed regional facilities as a viable alternative to the onsite LID BMPs without an exhaustive infeasibility analysis. (OCWD and MWDOC))

Response: The Permit specifies a hierarchy for selecting LID BMPs and other alternatives. First and foremost, onsite LID BMPs must be considered. We recognize that in certain cases, a regional or sub-regional facility provides certain benefits over an onsite LID BMP. The Permit and the WQMP/TGD have provisions for allowing regional and sub-regional facilities.

10. Comment: Infiltration of storm water in certain areas could exacerbate the inflow and infiltration (I & I) into the sanitary sewer

systems thereby overloading the sanitary sewer and substantially increasing the cost of sewage treatment. (OCSD)

Response: Certain sections of the WQMP/TGD have been revised to address this concern; see Errata Items 24-26.

11. Comment: Orange County Business Council supports the WQMP and would like to encourage the Board to allow for site-by-site low impact development requirements to be equally prioritized with regional and sub-regional solutions. (Orange County Business Council and OCWD)

Response: See response to Comment 9, above.

12. Comment: The City of Orange supports the WQMP/TGD draft. (City of Orange)

Response: Comment noted.

13. Comment: OCC/NRDC's eight comment letters were merely acknowledged and the contents were largely ignored. The comments provided by the environmental groups were not adequately considered. (OCC/NRDC)

Response: We have summarized most of these comments above, and indicated how these comments have been addressed. The April 22, 2011 comment letter from OCPW included two attachments that have summarized the OCC/NRDC's comments and how these comments have been addressed by OCPW in the subject documents.

14. Comment: The errata sheet was made available only at 1:36 p.m. on April 21, 2011 and the time provided for review of these numerous and significant changes was insufficient. (OCC and NRDC)

Response: Most of the changes in the errata sheet were to clarify the language in the WQMP/TGD based on comments from USEPA/OCC/NRDC. There were no significant changes to the WQMP or the TGD. The discussions on these issues have been ongoing for over a year at the technical advisory group. The USEPA, OCC, and NRDC participated in these discussions except for one meeting where OCC and NRDC did not participate.

15. Comment: There are chronic deficiencies in the WQMP/TGD and the appendices (OCC)

Response: We feel that the deficiencies in the WQMP and the TGD have

been addressed to the extent feasible. Most of the deficiencies, if not all of them, that were pointed out by OCC are discussed in the comments above. The responses above indicate how these have been addressed.

16. Comment: Linear utility projects should be exempt from the requirements for developing WQMP. (OCPW)

Response: The Permit specifies that a WQMP is required for new projects (mostly projects creating an impervious area of 10,000 square feet or more) and redevelopment projects. A redevelopment project does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activities. Provision XII.B.2 of the MS4 Permit. Given these limitations, most utility projects will not be considered as priority development projects and an exemption is not needed for such projects. Errata Item 1 has been edited to clarify the conditions under which linear utility projects would be considered priority development projects.

17. Comment: As WQMP must be submitted before the fill and soil compaction activities, requiring infiltration to be considered is not practicable. (OCPW)

Response: Most construction sites may have some fill and soil compaction. It is possible to provide some estimate of infiltration rates based on similar soil types or other readily available information on a preliminary basis and conduct the needed testing after fill and soil compaction activities are completed. Just as fill material can be specified to achieve certain standards to support the load of structures above, fill material can also be specified to achieve specified infiltration rates or to preserve its infiltration characteristics. The commenter incorrectly presumes that all fill material must be compacted; unnecessarily doing so in areas with infiltration potential, or assuming that all areas will be compacted, would intentionally preclude infiltration BMPs. For these reasons, the presence or proposed use of fill material alone is not sufficient reason to exclude infiltration BMPs.

18. Comment: Treatment control BMPs can be waived (with 30 day advance notice to the Executive Officer) where “costs greatly outweigh pollution control benefits”. (OCPW)

Response: Section XII.E.1 of the MS4 Permit applies to LID waivers. Any other waivers where the “costs greatly outweigh the pollution control benefits” should have the Executive Officer’s approval.