



O R A N G E C O U N T Y  
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April 21, 2011

Mark Smythe  
Santa Ana Regional Water Quality Control Board  
ATTN: Coast Stormwater Unit  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

**RE: Consideration of the Model Water Quality Management Plan (WQMP) and Technical Guidance Document (TGD), County of Orange, Orange County Flood Control District and the Incorporated Cities of Orange County – Agenda Item 12**

Dear Mr. Smythe,

Orange County Coastkeeper (Coastkeeper) appreciates the opportunity to comment on the materials released in advance of the April 22, 2011 Santa Ana Regional Water Quality Control Board (Regional Board) hearing concerning the model WQMP and TGD submitted in accordance with the Areawide Urban Storm Water Runoff Permit (R8-2009-0030, as modified by Order No. R8-2010-0062). Coastkeeper contributed to the development of the WQMP through our participation as a member of the local environmental community in the Technical Advisory Group (TAG). Throughout the process, Coastkeeper, in alliance with the Natural Resources Defense Council (NRDC), have regularly attended TAG meetings and submitted no fewer than eight (8) comment letters detailing our concerns with the development of the WQMP and TGD. However, apart from mere acknowledgements of receipt of our numerous comment letters the content of our letters were largely ignored to the great detriment of the final product.

In adopting R8-2010-0030, the MS4 Permit for North Orange County, the Regional Board provided the County of Orange and their staff at OC Watersheds with clear deadlines and compliance guidelines for implementing their latest MS4 permit. Coastkeeper warned the Regional Board that the extension of the deadlines in October 2010 would reward the County's blatant disregard for regulatory deadlines and would not provide any assurance of an improved final product or that the County would abide by the new deadline.

Unfortunately, OC Watersheds has defended its stellar record of regularly submitting incomplete documents to the Regional Board by again submitting a finalized document at the eleventh hour. We note the time allotted for comment on the finalized version of these materials is effectively one (1) day to read, review, analyze and write a comment letter on an entire model WQMP, TGD and Appendices of more than four hundred (400) pages. In fact, Coastkeeper received the final version of the documents being reviewed on April 22<sup>nd</sup> at 5:32 pm on April 20<sup>th</sup>. Effectively, this provides our organization with one calendar day to review a document that will directly impact the water quality of Orange County for at least the next five (5) years.

Due to the failure of the County of Orange to effectively manage the TAG in the production of a WQMP and TGD Coastkeeper withdrew from the process so as not to associate our name with the final product. Upon reviewing the final product our decision was well founded. Chronic deficiencies exist in the proposed WQMP, TGD and Appendices that were identified by Coastkeeper and NRDC during the first TAG meeting that were entirely ignored.

This letter briefly raises specific chronic issues that have plagued the development of the WQMP, TGD and Appendices since its inception. This is not an exhaustive account of the documents due to the failure of the County to submit the final version prior to the Regional Board hearing.

Coastkeeper also incorporates by reference our comment letters<sup>1</sup> addressed to OC Watersheds on the development of the WQMP and TGD as well as offer our support for the U.S. Environmental Protection Agency letter dated April 15, 2011. Unfortunately, many of the issues present in the latest version of the WQMP and TGD were addressed in our correspondence with OC Watersheds yet were not resolved in the development of this document. A brief account of the chronic unresolved issues of specific concern to Coastkeeper is as follows.

### Infiltration Feasibility

Appendix VII.2.1 and TGD page 2-32 discuss the Use of Regional Maps and “Available Data” concerning the feasibility of infiltration and the need for geotechnical investigation. In a previous iteration, Section 6.2.1.3 of the WQMP stated that infiltration should not be considered where a “project is located in D soils per regional maps and the project meets criteria to use regional maps for infiltration screening.”<sup>2</sup> Coastkeeper and NRDC argued, in concert with U.S. EPA, that neither regional nor “U.S. Department of Agriculture soil survey maps are sufficiently detailed for purposes of assessing site specific infiltration capacity.”<sup>3</sup> Essentially, determinations on the feasibility of infiltration throughout the County of Orange cannot be based on Regional Maps known to be imprecise. Our position has not changed in the eleven (11) months since we first argued that point.

### Water Quality Credits

As we have stated on numerous occasions, if water quality credits are to be allocated to specific projects they must offer a “water quality benefit in return for receipt of a credit.”<sup>4</sup> Although we appreciate the potential societal benefit the “conversion of...underused space into more beneficially used space” would have in a North Orange County community, we fail to see the water quality benefit such a project inherently possesses and what would qualify it as worthy of a water quality credit. We also note, as we did in our May 4, 2010 comment letter, that as written, the WQMP fails to satisfy the South Orange County Permit’s requirement that a “credit system clearly exhibits that it will not allow PDPs to result in a net impact from pollutant loadings over and above the impact caused by projects meeting LID requirements.”<sup>5</sup>

Furthermore, if categories of projects described in the WQMP are entitled to receive a water quality credit the value must have some relation to the water quality benefit. As written, a “Brownfield development” would receive a twenty-five (25) percent credit while a “Historic district, historic preservation area, or similar areas” would receive a ten (10) percent credit without any justification as to the means these apparently arbitrary percentages were gauged.<sup>6</sup> Additionally, the WQMP provides no technical justification for allowing a maximum credit of fifty (50) percent for projects meeting multiple criteria.

### Threshold Incremental Benefit Criterion

Coastkeeper agrees with U.S. EPA that Appendix XIII, Threshold Incremental Benefit Criterion, “should be deleted.”<sup>7</sup> In addition to the rationale provided by Mr. Smith of the U.S. EPA, the intent of the section appears to delegitimize proven economic feasibility of LID BMPs by inflating the “environmental and societal effects,”

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<sup>1</sup> NRDC and Coastkeeper letters to Mr. Richard Boon, OC Watersheds, January 22, 2010; February 25, 2010; March 23, 2010; April 13 2010; May 4, 2010; May 14, 2010, October 14, 2010, March 1, 2011

<sup>2</sup> See NRDC and Coastkeeper letter to Mr. Richard Boon, OC Watersheds, May 14, 2010.

<sup>3</sup> Id.

<sup>4</sup> See NRDC and Coastkeeper letter to Mr. Richard Boon, OC Watersheds, May 4, 2010.

<sup>5</sup> South Orange County Permit at F.1.d.(7)(g)

<sup>6</sup> WQMP, 7.II 3-6

<sup>7</sup> See U.S. EPA letter to Mr. Mark Smythe, Santa Ana Regional Water Quality Control Board, April 15, 2010.

or costs, of such BMPs without similarly accounting for associated benefits.<sup>8</sup> For example, Appendix XIII.2 details the “costs and potential effects” as including the, “[E]nergy and resources used to manufacture [p]lastic, metal, or concrete tanks...pumps, treatment systems and piping” as well as “disposal costs” and “air quality impacts associated with shipping, install[ation]...[and] maintenance.” The description of a cost/benefit analysis which demands accounting for all energy and resources of LID BMPs from cradle-to-grave will skew the results when a full analysis of the environmental benefits ignored. The Appendix should be removed so as not to poison the greater WQMP and TGD.

Due to OC Watershed’s persistent inability to submit complete documentation on time and the need to encourage the County to comply with valid orders from the Santa Ana Regional Board, Coastkeeper recommends the Regional Board find the County of Orange to be in violation of the terms of R8-2010-0030 for their failure to submit documents sufficient for adoption by the Regional Board in the period mandated by the permit.

Thank you for your consideration, please do not hesitate to contact us if you have any questions regarding this or any previous comment.

Sincerely,



Garry Brown  
Executive Director  
Orange County Coastkeeper

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<sup>8</sup> Appendix, XIII.2