



January 11, 2013

Via US Mail and E-mail

Mayor
Scott Voigts

Mr. David Gibson
Executive Officer
California Regional Water Quality Control Board,
San Diego Region
C/O Mr. Wayne Chiu, P.E.
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Mayor Pro Tem
Kathryn McCullough

Council Members
Peter Herzog
Adam Nick
Dwight Robinson

City Manager
Robert C. Dunek

Subject: **Comments - Tentative Order No. R9-2013-0001, Regional MS4 Permit, Place ID: 786088Wchiu.**

Dear Mr. Gibson:

The City of Lake Forest ("City") submits this letter to the California Regional Water Quality Control Board, San Diego Region ("SDRWQCB") to convey the City's formal written comments on Tentative Order No. R9-2013-0001/NPDES Permit No. CAS0109266 ("Draft Permit"). The Draft Permit is intended by the SDRWQCB to serve as the basis for stormwater regulation for the City upon the expiration of current Order R9-2009-0002. The City appreciates the efforts of the SDRWQCB staff in the development of the Draft Permit including the most recent revisions from the former Administrative Draft; however, significant concerns remain.

The City is aware that the County of Orange ("County") is submitting a comment letter documenting comprehensive technical and legal concerns identified during the review of the Draft Permit. The County's submittal also includes proposed revisions to the Draft Permit provided via "red line" format per SDRWQCB staff request. City staff have participated closely in the collaborative development of this comprehensive set of comments and the City has requested to be named as a concurring entity in the County's letter. The City would like to express its full support for the County's comments and proposed revisions. While detailed comments are provided within the County's submittal, the City would like to note and specifically highlight several key issues of concern as follows:

- The Receiving Water Limitations provisions in the Tentative Order could expose the City to Clean Water Act liabilities for discharges that cause or contribute to an exceedance of a water quality standard. A clear linkage between the compliance provisions and prohibitions, receiving water limitations, and effluent limitations must be established.

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The provisions dealing with land development, Low Impact Development (LID) and hydromodification control are significantly ratcheted up while existing permit programs are only just being implemented and/or pending approval. The City is particularly concerned with the elimination of all exemptions for the hydromodification control requirements, including for discharges to channels that have been engineered to prevent erosion. Exemptions for hydromodification management should include discharges to certain types of receiving waters and certain types of projects. The City additionally questions the Regional Board's authority to impose *any* flow related limitations in an NPDES permit following the District Court's decision in *Virginia Dept. of Transportation v. EPA*, No. 1:12-CV-775, slip op. (E.D. Va. Jan. 3, 2013).

- The provisions implementing the Beaches and Creeks Total Maximum Daily Load (TMDL) bacteria requirements are inconsistent with the TMDL as it was developed and pose additional significant liabilities. Federal law does not require NPDES permits for municipal discharges to include TMDLs. (*Defenders of Wildlife v. Browner* 191 F.3d 1159 (9th Cir. 1999); 40 C.F.R. § 122.44(d).) Pursuant to state law, permit provisions must be consistent with the corresponding Basin Plan amendments (Cal Water Code § 13263), and may only be included after consideration of "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." (*Id.*)
- The provisions requiring the development and implementation of a Water Quality Improvement Plan need to be aligned with the Jurisdictional Runoff Management Program requirements so that the programs are complimentary and prioritized instead of additive.

Thank you for your attention to our comments. The City is committed to the goal of water quality improvement and wants to work with the SDRWQCB in developing the most prudent and cost effective permit possible. If you should have any questions, please contact Devin Slaven, Water Quality Administrator, at (949) 461-3436, or dslaven@lakeforestca.gov.

Sincerely,

CITY OF LAKE FOREST

A handwritten signature in black ink, appearing to read 'T. Wheeler', with the year '2012' written at the end of the signature.

Thomas Wheeler, P.E.
Director of Public Works/City Engineer

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cc: Robert C. Dunek, City Manager
Devin E. Slaven, CPSWQ, QSD/QSP, Water Quality Administrator
Scott Smith, City Attorney, Best Best & Krieger, LLP
Mary Anne Skorpanich, County of Orange, OC Watersheds

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