



City of Mission Viejo

Public Works Department

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December 8, 2009

Mr. David Gibson
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

**Re: Tentative Order No. R9-2009-0002, NPDES CAS0108740
Comments on Draft Updates & Errata to August 12, 2009, Public Release Draft**

Dear Mr. Gibson:

The City of Mission Viejo is writing in response to the request for comments contained in the December 2, 2009, Executive Officer's Summary Report.

We believe the Updates and Errata Document is a vast improvement over the approach to the regulation of non-stormwater dry weather discharges proposed at the November 18, 2009, Board Hearing. However, we are disappointed with the abnormally quick turnaround time given between Wednesday's e-mail from Mr. Neill notifying the City of the revisions to the Permit and the 5:00 p.m. deadline today for responses to the 30+-page Updates and Errata Document.

We are in agreement with the County of Orange's recommended errata sheet changes and cover letter, and respectfully ask for the opportunity to discuss the recommended changes with you prior to the December 16, 2009, Board Meeting because, as currently written, the City finds the Regional Board's Updates and Errata Document untenable. If your schedule does not allow for the Permittees to meet with you before the Board Meeting, we respectfully ask that the Regional Board delay the Permit Adoption Hearing until such time after we meet.

Specifically, we support the County's recommendation to engage an expert panel like the Southern California Coastal Water Research Project (SCCWRP) to develop scientifically-based numeric action levels and an implementation strategy. Under this proposal, the Permittees would submit to the Executive Officer the expert-developed NALs and implementation strategy within 18 months of permit adoption. If the Permittees failed to meet the 18-month deadline, the action



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levels and the implementation approach provided in the Updates and Errata Document would become effective by default.

The basis for this request lies in the fact that NALs are not numeric effluent limitations (NELs); however, Regional Board staff left the derivation of NALs the same as the previously worded NELs. We believe the NALs should be derived based on an analysis of the constituents in dry weather non-stormwater discharges just as they are for the stormwater action levels (SALs).

We also believe that, like the SALs, the Permittees should be able to take into account the "magnitude, frequency, and number of constituents exceeding the SAL(s)" when determining how to respond to the exceedances of NALs. As currently written in finding E.12 of the Regional Board's Updates and Errata Document, any one exceedance triggers the need for a complete investigation and elimination of the source; otherwise, the City will be found not to be in compliance with the Order. We find this particular statement to be untenable, and to be counter-productive to the intent of this section, which is to ensure that the Permittees take an escalating series of enforcement actions for those illicit discharges that are not a serious threat to public health or the environment.

We also agree with the County of Orange's concerns with proposed Directive C.2.a regarding the meaning of the phrase "natural in origin and conveyance." As currently written, we believe the exemption provided in Directive C.2.a for discharges that are natural in origin and conveyance may never apply because the MS4s themselves generally are not natural conveyances, a constituent that is natural in origin may not be considered to be natural in conveyance once discharged from the MS4. We believe the language as proposed by the County addresses this issue.

City staff is interested in a meaningful dialogue with you on these issues, and we hope that you and your staff members will accept our request to meet.

If you have any questions regarding our comments, please do not hesitate to contact me at (949) 470-3079 or Joe Ames at (949) 470-8419.

Sincerely,



Rich Schlesinger, P.E.
City Engineer
City of Mission Viejo

cc: Dennis Wilberg, City Manager
William P. Curley III, City Attorney
Mark Chagnon, Director of Public Works
Joe Ames, Associate Civil Engineer
South Orange County Permittees