



# CITY of CYPRESS

5275 Orange Avenue, Cypress, California 90630

Phone 714-229-6700

www.ci.cypress.ca.us

February 6, 2009

|                   |  |
|-------------------|--|
| CRWQCB - REGION 8 |  |
| MES               |  |
|                   |  |

FEB 13 2009

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |

Mr. Gerard J. Thibeault  
 Executive Director  
 California Regional Water Quality Control Board  
 Santa Ana Region  
 3737 Main Street, Suite 500  
 Riverside, CA 92501-3348

Subject: Comments from the City Relative to the Tentative Order No. R8-2008-0030 (Draft 4<sup>th</sup> Term NPDES/Stormwater Permit)

Dear Mr. Thibeault:

Thank you for the opportunity to comment on the draft permit. The City fully supports the intent of the stormwater pollution prevention program, and its objectives to minimize pollutants from entering our rivers, streams, and beaches. We also understand the daunting task of drafting a permit that must address regulatory mandates, and the complex and challenging issue of water quality protection.

The City is pleased with the draft permit's increased attention on public education. However, the draft permit also prescribes new areas of program responsibility which present significant concern, and which are identified in our detailed comments. The City's four primary concerns with the draft permit relate to the practical implementation issues with the draft permit for local agencies, the rapid timetable for implementation during the current economic climate, inconsistencies with different provisions within the draft permit, and potential legal issues.

The first three will be discussed in detail within Attachment A. For the fourth issue, which is the legality of some provisions, it is our understanding that the County of Orange will submit comments to the Regional Board relative to the draft permit. We agree in principle with many of their concerns including, but not limited to, those that encourage plan development through a stakeholder approach, clarification of Permit provisions, and updated fact sheets that support the findings. We are in full concurrence with their legal comments submitted by the County of Orange including the following assertions that the permit attempts to prescribe conditions that go beyond that required by Federal law, improperly intrudes upon City's land use authority in violation of the Tenth Amendment, and imposes a prescriptive standard as compliance, improperly attempts to regulate non-point sources in violation of the Clean Water Act, and lastly, imposes inspection requirements on the City that would violate the Fourth Amendment.

**Doug Bailey, Mayor**

**Prakash Narain, M.D., Mayor Pro Tem**

**Phil Luebben, Council Member**

**Leroy Mills, Council Member**

**Todd W. Seymore, Council Member**

Mr. Gerald J. Thibeault  
NPDES/Stormwater Permit  
February 6, 2009  
Page 2

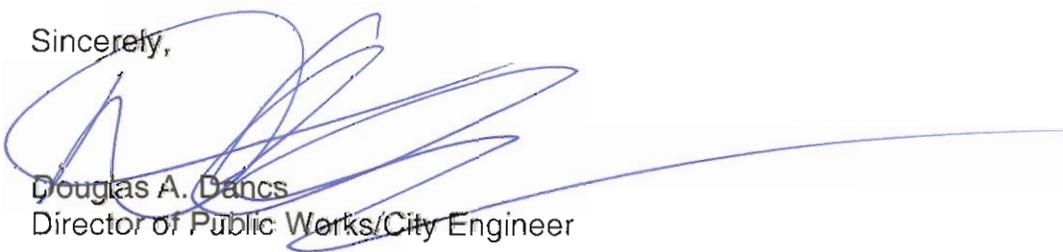
Furthermore, the City of Cypress recently attended the meeting of January 29, 2009, with the County of Orange and the Regional Board staff to discuss concerns with the various non-land development concerns raised by the County and co-permittees. The City agrees with many of the recommendations that were raised by the group, and have included references to these suggestions in the detailed comments.

Also, we understand that the sections of the draft Permit relative to New Development/Redevelopment including the Low Impact Development (LID) provisions are currently under review by the stakeholder group. The comments in this letter regarding this area are limited. The City of Cypress will elaborate further when it submits its comments on the final development provisions once a consensus has been reached by all parties involved.

We share your goal of improving water quality. The current permit configuration may potentially cause cities to fail. Additionally, this strained economic climate is the worst time for cities to implement new requirements that contain financial impacts.

The City of Cypress looks forward to the continued and collaborative refinement of the proposed Permit. We appreciate the effort currently being taken by the stakeholder group and Board Staff as they address the development sections of the draft Permit, and look forward to a resolution that will satisfy all parties involved. We hope you take our suggestions as a dialogue to improve the permit. Therefore, if you are amenable, we would like to schedule a separate meeting to discuss our concerns with Mark Smythe of your staff in the spirit of cooperation. If you have any questions regarding this letter, please contact me directly at (714) 229-6740.

Sincerely,



Douglas A. Dancs  
Director of Public Works/City Engineer

Attachments: Attachment "A" City of Cypress Comments

cc: John B. Bahorski, City Manager  
Mark Smythe, Senior Environmental Scientist, SARWQCB  
Mary Anne Skorpanich, County of Orange

## Attachment "A"

### Comments from the City of Cypress Relative to the Draft 4<sup>th</sup> Term Permit

#### Section III, Discharge Limitations/Prohibitions –

With regard to the following section:

*"3. The permittees shall effectively prohibit the discharge of non-storm water into the MS4s, unless such discharges are authorized by a separate NPDES permit or as otherwise specified in this provision. For purposes of this order, a discharge may include storm water or other types of discharges identified below.*

*ii. The permittees shall prohibit the following categories of non-storm water discharges unless the stated conditions are met:*

*a) Discharges from potable water sources, including water line flushing, superchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water: Planned discharges shall be dechlorinated to a concentration of 0.1 ppm, 26 or less, pH adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments."*

The Orange County Stormwater program has developed BMP Fact Sheets *FP-6 - Water and Sewer Utility Operation and Maintenance*, *FP-7 Fire Department Activities* and *IC-23 Fire Sprinkler Testing/Maintenance*. In the absence of any Finding that existing control efforts are inadequate, specific requirements for the discharges identified in Section 3.ii.a) should reference these Fact Sheets.

From our January 29<sup>th</sup> meeting with Board Staff, it is our understanding that cities served by private water purveyors will not be subject to the County Permit requirements for discharges from potable water sources since private water companies are subject to coverage under their own NPDES permit. Cypress is served by Golden State Water Company for its water.

*b) Discharges from lawn watering and other irrigation runoff from non-agricultural operations: These discharges shall be minimized through public education and water conservation efforts, as prescribed under Section XI, Residential Program.*

This requirement states that cities must prohibit the discharge, while at the same time states, cities should minimize the discharge with public education. We agree that public education regarding this effort is the preferred strategy. Co-permittees are already doing this by means of target advertising such as irrigation runoff advertisements that are published in local newspapers.

*c) Dechlorinated swimming pool discharges: Dechlorinated to a concentration of 0.1 ppm 27 or less, pH adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4s.*

Placing numeric limits for pool discharges affirms what the City is already doing by distributing the County's "Tips for Pool Maintenance" brochure. The City wants to be certain the intent is not to make the City test each discharge or have the City require residents to obtain permits for such.

### **Section VI, Legal Authority/Enforcement –**

*"2. The permittees shall carry out inspections, surveillance, and monitoring necessary to determine compliance with their ordinances and permits. The permittees' ordinance must include adequate legal authority to enter, inspect and gather evidence (pictures, videos, samples, documents, etc.) from industrial, construction and commercial establishments. The permittees shall progressively and decisively take enforcement actions against any violators of their Water Quality Ordinance. These enforcement actions must, at a minimum, meet the guidelines and procedures listed in the Enforcement Consistency Guide."*

The Fourth Amendment is clear in its policy of protecting the security and privacy rights of individuals against unpermitted or unwarranted governmental invasions. The permittees' ordinance cannot allow unpermitted entry into private property for the purpose of inspection or collection of evidence to ensure compliance with the permittees' water quality ordinance. Section VI needs to explicitly recognize the limitations imposed by the constitutions of California and the United States to enter premises to inspect etc.

*"3. Permittees' ordinances or other local regulatory mechanisms shall include sanctions and follow up inspection milestones to ensure compliance. Sanctions shall include, but are not limited to: monetary penalties, non-monetary penalties, bonding requirements, and/or permit denials/revocations/stays for non-compliance. Follow up inspection milestones shall be consistent with applicable sections of this order. Permittees' ordinances shall have a provision for civil or criminal penalties for violations of their water quality ordinances. These penalties shall be issued in a decisive manner within a predetermined timeframe, from the time of the violation's occurrence and/or respective follow up inspection. Within one year of the adoption of this order, each permittee shall submit a statement, signed by legal counsel, that the permittee has obtained all necessary legal authority in accordance with 40 CFR 122.26(d)(2)(i)(A-F) and to comply with this order through adoption of ordinances and/or municipal code modifications."*

The City of Cypress believes that the Model Water Quality Ordinance, Investigation Guidance Manual and our own enforcement procedure, or an agency's self-developed program, would satisfy this requirement.

*"6. The permittees shall continue to provide notification to Regional Board staff regarding storm water related information gathered during site inspections of industrial and construction sites regulated by the Statewide General Storm Water Permits and at sites that should be regulated under those Statewide General Permits. The notification shall be provided on a quarterly basis and shall include any observed violations, or threat of potential violations of the General Permits (e.g., problematic housekeeping issues) prior history of violations, any enforcement actions taken by the permittee, and any other relevant information. (Also see notification requirements under Sections VIII, IX, and X of this Order.)"*

As you may know, we have provided the Board staff a wealth of information on a monthly basis to show our compliance with the permit, and to inform Board Staff on what is occurring within our City including areas where there are statewide general permits. The Third Term Permit allows the agencies the flexibility to report issues as they occur or at other intervals. It should be up to the agency to provide this information, and not set a prescribed quarterly time period. In addition, the City agrees with the recommendation made by the County of Orange at the January 29<sup>th</sup> meeting regarding compliance with the Statewide General Permits. Compliance with the intent of the Permit can be achieved by agencies using their own local ordinances and water quality codes rather than with a global approach. A clear distinction between local and state responsibilities must be defined.

*“8. The permittees are encouraged to enter into interagency agreements with owners of other MS4 systems, such as Caltrans, school and college districts, universities, Department of Defense, Native American Tribes, etc., to control the contribution of pollutants from one portion of the MS4s to another portion. The Regional Board will continue to notify the owner/operator of the MS4 systems and the local municipality if the Board issues a permit for discharges into the MS4 systems.”*

Local government agencies historically have never had any authority over activities performed by state and federal agencies. For example, with AB 939 requirements for solid waste diversion, it proved challenging to partner with school districts and community colleges since they are not under our regulatory jurisdiction to implement solid waste source reduction initiatives. Moreover, Phase II stormwater permittees are primarily a Regional Board responsibility. The language of the current permit (p.8 Finding 25) should be retained in this instance as the sole reference to these entities.

### **Section VIII, Municipal Inspections of Construction Sites –**

*“2. Each permittee shall continue to maintain and update (at least on a quarterly basis) an inventory of all construction sites within its jurisdiction for which building or grading permits have been issued and where activities at the site include: soil movement; uncovered storage of materials or wastes, such as dirt, sand or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar or stucco. All construction sites shall be included regardless of whether the construction site is subject to the General Construction Permit or other individual NPDES permit. This inventory shall be maintained in the 2002 Spreadsheet developed by the permittees or a similar computer-based database system and shall include relevant information on site ownership, General Construction Permit WDID number (if any), size, location (latitude/longitude (in decimals) or NAD83/WGS8431 compatible formatting as identified by GIS for a spot within the site perimeter), inspection data, etc.”*

This GIS information is an additional data collection process that will require additional staff time to update and monitor to ensure its accuracy while at the same time, it is not known what benefit this information provides. Furthermore, how will public works-type construction, such as pipelines, be treated since they cannot accurately be identified with a single point? Also, how are projects that cover multiple locations such as a sanitation district, a manhole replacement project, or an above ground multi cabinet installation by a telephone company to be identified? This GIS data collection requirement should be left to the discretion of the Permittee after consideration of the practicality and utility to its stormwater management efforts.

Alternatively, we would suggest the following language or similar equivalent:

*“Construction within the public right of way is excluded from this GIS requirement.”*

**Section IX, Municipal Inspections of Industrial Facilities –**

*1. “Each permittee shall continue to maintain an inventory of industrial facilities within its jurisdiction. All sites that have the potential to discharge pollutants to the MS4 should be included in this inventory regardless of whether the facility is subject to business permits, licensing, the State’s General Industrial Permit or other individual NPDES permit. This database must be updated on an annual basis. This inventory must be maintained in a computer-based database system and must include relevant information on ownership, SIC code(s), General Industrial Permit WDID # (if any), size, location, etc. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8432 compatible formatting.”*

As mentioned previously, this GIS information is an additional data collection process that will require additional staff time to update and monitor to ensure its accuracy. It is not known what benefit this information provides. There may be little use of this information to cities that do not have GIS. This GIS data collection requirement should be left to the discretion of the Permittee after consideration of the practicality and utility to its stormwater management efforts. The same statement also holds true for the commercial facilities inspection requirement.

**Section X, Municipal Inspections of Commercial Facilities –**

*“2. Each permittee shall conduct inspections of its commercial facilities as indicated below. To establish priorities for inspection, the permittees shall continue to prioritize commercial facilities/businesses within their jurisdiction as a high, medium or low threat to water quality based on such factors as the type, magnitude and location of the commercial activity, potential for discharge of pollutants to the MS4, any history of unauthorized, non-storm water discharges, proximity and sensitivity of receiving waters, material used and wastes generated at the site. The following minimum criteria must be met: 10% of commercial sites (not including restaurants/food markets) must be ranked ‘high’ and these represent the greatest threat to water quality; 40% of commercial sites (not including restaurants/food markets) must be ranked ‘medium’; and, the remainder may be ranked ‘low’.”*

This section presents a number of fundamental concerns. For example, facilities that do not meet the minimum requirements for inspection will be subject to inspections on an entirely arbitrary basis in order to comply with the Permit. Please consider how would a Permittee refute petitions filed by commercial facilities who believe that they have been unfairly re-prioritized? This was discussed at the January 29<sup>th</sup> meeting. Also consider if agencies tried to recoup their efforts through fees, how would it justify the arbitrary nature of this effort for a business selected for a higher inspection threshold?

The City understands the position of the Regional Board that a target goal should be established for commercial facilities prioritization. However, consideration should be given to reducing the number of mandatory inspections. By permitting the revision of the DAMP, we could achieve a technically robust risk-based approach to inspection and still meet the intent of the Permit.

*“8. Within 12 months of adoption of this order, the PRINCIPAL PERMITEE shall notify all mobile businesses operating within the County concerning the minimum source control and pollution prevention measures that they must develop and implement. For purposes of this order, mobile businesses include: mobile auto washing/detailing; equipment washing/cleaning; carpet, drape, furniture cleaning; and mobile high pressure or steam cleaning. The mobile businesses shall be required to implement appropriate control measures within 3 months of being notified by the permittees. Within 12 months of adoption of this order, the PRINCIPAL PERMITEE shall develop an enforcement strategy to address mobile businesses. Each permittee shall also distribute the BMP Fact Sheets for the mobile businesses that have been developed by the permittees. At a minimum, the mobile business Fact Sheets/training program should include: laws and regulations dealing with urban runoff and discharges to storm drains; appropriate BMPs and proper procedure for disposing of wastes generated from each mobile business.”*

Although we understand the relevance of this section, we believe that this requirement is difficult to implement considering the nature of mobile businesses, and the additional resources that will be required to monitor their activities. Many of these businesses fail to obtain business licenses to operate in jurisdictions, which makes it even more difficult to monitor. The cities are already performing enforcement of mobile businesses through existing public education programs. If the mobile business operators are observed working in the City, they will be approached and apprised of their responsibilities. At this time, the pertinent information such as business location, telephone number, and operator name can be obtained and entered into a database and later provided to the Regional Board. However, launching a regional canvassing program could be very time consuming and costly for agencies.

As was discussed at the January 29<sup>th</sup> meeting, the City supports the idea of implementing a pilot program to address the issue of mobile businesses. The comments made at the meeting supported the argument that this is an issue that crosses many jurisdictional boundaries as mobile businesses are located throughout Southern California. An effort must be made to avoid the development of a program that will require significant resources to implement and result in diminished returns. We also agree with the County of Orange that this requirement should be the responsibility of the Principal Permittee.

### **Section XI Residential Program –**

*“2. The permittees should identify residential areas and activities that are potential sources of pollutants and develop Fact Sheets/BMPs. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The permittees shall require residents to implement pollution prevention measures. The permittees should work with sub-watershed groups (e.g., the Serrano Creek Conservancy) to disseminate latest research information, such as the UC Master Gardeners Program and USDA’s Backyard Conservation Program.”*

The prevention of illegal discharges in residential neighborhoods can be achieved through public education. Residents have become more aware of protecting water quality, especially through the City’s current public education program, which includes the quarterly City newsletter, City website, local cable television public service announcements, as well as, Powerpoint slide presentations – aired on the local cable television channel. The

proposed revisions reflect a move to a more punitive approach for violations committed by residents, and may be viewed as unwarranted government intrusion by local residents. We agree with the comment made at the January 29<sup>th</sup> meeting that permittees should “encourage” as oppose to “require” compliance by residents. This falls in line with the approach that has been utilized by co-permittees to gain cooperation from residents and continued public support for the NPDES program. Furthermore, the separate requirements in Section XIII to conduct public education and outreach make the requirements in *Section XI Residential Program* redundant and therefore unnecessary.

*“3 .The permittees, collectively or individually, shall facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes. Such facilitation should include educational activities, public information activities, and establishment of curbside or special collection sites managed by the permittees or private entities, such as solid waste haulers.*

Consideration should be given to the potential threat of these materials being released into the storm drain system as they are waiting to be collected. If this is not a concern, then it appears to contradict the requirement of commercial establishments to store hazardous wastes within secondary containment devices.

The City is concerned with funding for conducting the collection events. Events held by agencies are known to cost several thousand dollars to conduct, not including all of the hazardous waste reporting that must be completed when these events are held. The current County of Orange Household Hazardous Waste Collection Program has been working well since its implementation and agencies continue to do a good job making residents aware of this service. Therefore, there does not seem the need to prescribe new programs. It is suggested to change the language from a “shall” requirement to an “are encouraged” requirement since the next statement says “should” facilitate.

*“4. The permittees shall develop and implement control measures for common interest areas and areas managed by homeowner associations or management companies. The permittees should evaluate the applicability of programs such as the Landscape Performance Certification Program to encourage efficient water use and to minimize runoff.”*

The imposition of control measures for common interest areas and areas managed by homeowners will be difficult to implement, especially for projects that were constructed under conditions of approval without water quality conditions. We concur with the comments that were made at the January 29<sup>th</sup> meeting that the permittees should be encouraged to develop and implement the control measures or consider implementing pilot programs where the effectiveness of these control measures can be evaluated.

## **Section XII New Development (Including Significant Redevelopment)**

**These are only preliminary comments until such time the stakeholder group concludes their discussion.**

*“XII A 8. The permittees shall train their employees involved with the preparation and/or review of CEQA documents as specified in Section XVI.”*

We understand the importance of training of employees to keep them apprised of the requirements of the NPDES program so that all of the actions are implemented in accordance with the Permit. Please also refer to our comments made on Section XII.F.3. If training is required, then we are in support of a training program that will extend over a two year period or give co-permittees an opportunity to develop and conduct their own employee training programs.

*"XII B 2 i) Streets, roads, highways and freeways of 5,000 square feet of paved surface. The WQMP should address the project area. This category includes any paved surface used for the transportation of automobiles, trucks, motorcycles and other vehicles and excludes any routine road maintenance activities where the footprint is not changed."*

The City does not understand whether these criteria will make projects, such as street reconstruction projects, subject to treatment requirements. This is important to know being that the entire street system can be considered a conveyance system for all stormwater runoff. It would seem ineffective to have the street detain a two year storm for its own area when it is receiving all the surrounding water from the adjacent properties to convey it to a pipe system. We would recommend excluding streets from this requirement.

In addition, clarification is needed as to whether a project would be considered a priority project if it includes the disturbance of 5,000 square feet but the project area is not contiguous. For example, if there is a city-wide sidewalk replacement program that entails an area greater than 5,000 square feet of damaged sidewalk at various locations within the City, would this make the project subject to a WQMP and require the incorporation of structural treatment measures? Again, this type of project should have exclusionary language within the permit.

Furthermore, the footnote for above states:

*"42. If a feasibility study indicates that it is not feasible to implement standard WQMP requirements due to unique constraints imposed on the project, alternatives acceptable to the Executive Officer must be implemented."*

There are many routine projects that a City undertakes to improve its infrastructure, such as sidewalk and street reconstruction. To require a "feasibility" study for these types of projects, (and submit an alternative analysis to the Executive Officer) appears both burdensome and cost prohibitive, without yielding any appreciable difference in storm water quality. Please clarify the reasoning behind this proposal, as this may not be your intent.

*"XII F 2. The permittees shall maintain a database to track all structural treatment control BMPs, including the location of BMPs, parties or operation and maintenance"*

The City requests clarification as to the type of data tracking that is expected from co-permittees when it relates to structural treatment control BMPs. Will this tracking only include those treatments that are constructed during the period of the 4<sup>th</sup> Term Permit or will it be retroactive and, if so, from what date or time period? We suggest the following language be added *"starting with the implementation of the 4<sup>th</sup> term permit."*

*“XII.F.3. The principal permittee, in collaboration with the co-permittees, shall define expertise and competencies needed for permittee staff for the review and approval of WQMPs. The permittees shall develop a training program and a schedule to train permittee staff for this task. By July 1, 2009, and annually thereafter, all permittee staff that review WQMP shall be trained. The training information for each permittee staff shall be included in the annual report.”*

As discussed in the January 29<sup>th</sup> meeting, a certificate program may cause issue with various employee groups. Please realize there are many state mandated training requirements that are required of city personnel for other efforts. This cumulatively removes them from their regular job duties. However, as stated previously, the City would be in support of a training program that extends over a two year period or provides the option of the City to develop and conduct its own training program for employees.

*“XII.I.2. The permittees shall specify conditions of approval that require proper maintenance and operation of all structural treatment control BMPs installed in new developments. The parties responsible for the long-term maintenance and operation of the structural treatment control BMPs for the life of the project and a funding mechanism for operation and maintenance shall be identified prior to approval of the WQMP.”*

With regard to this section, one viable option to ensure ongoing maintenance of BMPs is through the issuance of a maintenance bond as assumed by the occupant of the building. However, the City is concerned with this approach, as it will place an additional financial burden on the building occupant and, eventually, negatively impact businesses in the long run.

In summary, the City is concerned with the implementation of the proposed development process contained in the draft permit. We look forward to the consensus that will be reached as a result of the ongoing discussions by the stakeholder group who is reviewing the draft development process. If a compromise is not reached prior to the end of the comment period, it is recommended that this matter continue to be evaluated by the stakeholder representatives until a consensus can be reached. We believe that there are other approaches that provide proven results, and minimal impacts on development, that have not been explored, and should be considered for the permit.

### **Section XIII Public Education and Outreach –**

*“4. The permittees shall continue their outreach and other public education activities. Each permittee should try to reach the following sectors: manufacturing facilities; mobile service industry; commercial, distribution and retail sales industry; residential/commercial landscape construction and services industry; residential and commercial construction industry; and residential and community activities. Individual workshops (or regional workshops) for each of the aforementioned elements shall be administered by each permittee (or on a countywide basis) by July 1, 2010 and on an annual basis thereafter. Commercial and industrial facility inspectors shall distribute developed educational information (Fact Sheets) to these facilities during inspections. Further, for restaurant, automotive service centers and gasoline service station corporate chains, new information or that which has been previously developed shall be provided to corporate environmental managers during outreach visits that should take place twice during the permit term. The outcomes from all outreach requirements contained herein shall be reported in the applicable annual reports.”*

The City has noticed a discrepancy with this paragraph where it initially states the “co-permittee shall continue” and then is followed with the word “should” in the subsequent sentence. Additionally, there may be alternative methods to deliver the message to corporations than speaking with the environmental managers at their facilities. As a result of its inspections, the City has gained better cooperation from facilities when we go directly to top management as they will ensure that the information gets delivered to the appropriate employees and disseminated to the balance of the employees accordingly. The target recipient for education and outreach efforts needs to be determined by each Permittee and not prescribed in the Permit.

*“7. The PRINCIPAL PERMITEE, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of the Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses.”*

The City is concerned with this section as it appears to dictate the means and methods that should be used by cities to gain public participation in the review and approval process of water quality related documentation.

#### **Section XIV Municipal Facilities/Activities –**

*“7. Within six months of adoption of this order, the principal permittee shall evaluate the effectiveness of debris booms and determine if additional debris booms are needed to address floatables in inland streams. This evaluation should also include an evaluation of other control measures such as more effective street sweeping program, litter control measures, and drain inlet screens and /or other inlet controls.”*

Debris booms have already been studied by the City of Seal Beach under a grant funded by the Coastal Conservancy. It is our understanding that the City of Seal Beach received correspondence during their debris boom project from the City of Long Beach Fire Chief regarding concerns by first responders regarding the possibility that both rescuers and victims could be trapped in the booms. This may lessen the need for further study on high volume waterways due to public safety concerns regarding booms.

*“9. The permittees shall ensure that their flood management processes and projects do not contribute pollutants to receiving waters to the MEP.”*

This statement could be very broadly interpreted. The City does not understand how this will be enforced without some more specific language.

*“14. Each permittee shall implement control measures necessary to minimize infiltration of seepage from sanitary sewers to the storm drain systems through routine preventive maintenance of the storm drain system. The permittees who are also owners and/or operators of sewage collection systems shall also implement a routine maintenance program for the sewage collection systems in accordance with the State Board’s Water Quality Order No. 2006-0003. Each permittee shall cooperate and coordinate with the sewage collection/treatment agencies (Orange County Sanitation District and/or Irvine Ranch Water District) to swiftly respond to and contain any sewage spills.”*

This is currently being performed by agencies under the Statewide WDR. It is not understood why this is being reiterated in the permit. It is recommended that this section be removed from the permit.

**Section XVII Notification Requirements –**

*“2. At a minimum, all sewage spills above 1,000 gallons and all reportable quantities of hazardous waste spills as per 40CFR 117 and 302 shall be reported within 24 hours. All spill incidents shall be also included in the annual report. The permittees may propose a reporting program, including reportable incidents and quantities, jointly with other agencies, such as the County Health Care Agency, for approval by the Executive Officer.”*

For implementation, it would seem to be more effective to have one point of contact within the Regional Board in these situations. Reporting to multiple agencies appears as a duplication of effort and could result in confusion. To prevent this, the City suggests that there be one point of notification when it involves sewage spills.

**Section XVIII – Watershed Action Plans and TMDL Implementation –**

*“4. The permittees with discharges tributary to Coyote Creek or the San Gabriel River shall develop and implement constituent-specific source control BMPs for copper, lead and zinc until a TMDL implementation plan is developed. The source control plan shall include a monitoring program and shall be completed within 12 months from the date of adoption of this order.”*

With regard to the imposition of TMDL requirements upon Coyote Creek, the City recommends that TMDL requirements be deleted. We believe that imposing TMDL requirements upon a tributary that has had TMDLs imposed by another Regional Board (Los Angeles) exceeds the boundaries of the Santa Ana Regional Board's jurisdiction. Requiring permittees to implement constituent-specific source control BMPs is unfounded until a correlation can be made as to the point of origin of the pollutants. Furthermore, it is our understanding that a TMDL cannot be imposed upon this section of the Coyote Creek without the supporting studies, and public notification process taking place. To base this solely on waste load allocation findings produced by another Regional Board conflicts with the entire TMDL implementation process as established by the Clean Water Act and the United States Environmental Protection Agency. Public input is a key component to the development of TMDLs. The proposed permit does not afford this opportunity. Basically, TMDLs should not be imposed by the Santa Ana Regional Board until a determination can be made that pollutants originating from the Santa Ana Region impair the upper reach of Coyote Creek. Without a TMDL implementation plan, this designation cannot be applied to the section of the watershed.

**Section XX Fiscal Analysis –**

*“1. Each permittee shall secure the resources necessary to meet all requirements of this order.”*

The Board suggests in the findings section of the permit to raise taxes via a Proposition 218 vote. However, any such initiative most likely will be defeated by voters, especially in these hard economic times. If the City goes out for a vote, then loses, it effectively becomes a

mandate not to address water quality. The City is concerned with the financial impact that all of the requirements will have on City operations, now and in the future. It is extremely important in this economy to make certain that the cost/benefit be evaluated of what is being required, and its benefits to water quality.

*"2. The permittees shall prepare and submit a unified fiscal accountability analysis to the Executive Officer of the Regional Board."*

City requests clarification on the definition of "a unified fiscal accountability analysis", and why "accountability" was added to the definition.