

# **South Bay Cities Council of Governments**

July 25, 2013

TO: SBCCOG Board of Directors

FROM: Board Member Jim Knight, Rancho Palos Verdes

RE: New MS4 Permitting Requirements

Board member Knight will not be able to be at the Board meeting but he has provided the attached comments that he presented to the Santa Monica Bay Restoration Commission.

They are included in this agenda for your information and to stimulate discussion.

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**To: Santa Monica Bay Restoration Commission, June 20<sup>th</sup> meeting**

**From: Jim Knight, Rancho Palos Verdes City Council**

## **New MS4 Permitting Requirements**

Regulatory challenges for cities and possible solutions to those challenges

### **MS4 Background**

All cities agree that good coastal water quality is not only the right thing for which to strive but also enables our coastal resources to continue to provide the economic engine for our cities to flourish. The Federal Clean Water Act encompasses these same goals and the Federal Government has allowed the State of California to implement the Act through 9 regional water quality boards, The Los Angeles Regional Water Quality Control Board (LARWQCB) being the one that regulates the South Bay cities.

At the LARWQCB's November 8, 2012 meeting, the Board adopted new Municipal Separate Storm Sewer System (MS4) permitting requirements. These new requirements made several changes to previous National Pollutant Discharge Elimination System (NPDES) permits.

The new MS4 regulations:

- Separated the cities from L.A. County as co-permittees leaving the individual cities solely responsible for meeting water quality regulations;
- Changed incremental *efforts* toward implementation as proof of compliance to requiring *proof* of compliance at outfalls (Numeric Effluent Levels, NELs);

- The cities are responsible to monitor and control over 140 pollutants including new wet weather/non-storm water outfall monitoring and new categories of Total Maximum Daily Loads (TMDLs);

- Implement short timelines for compliance.

Cities are required to meet these new MS4 standards by Dec. 28, 2013 and it is up to the cities to figure out on their own how to fund their compliance of these new regulations.

## **City Options**

Under the MS4 guidelines, cities have one of three choices to comply with the new permitting requirements:

### **1) Minimum Control Measures (MCMs)**

This option is a go it alone path utilizing Best Management Practices measures to comply with MS4. This keeps the compliance program and funding under the local city's control. Under this option, the MCMs must be implemented within 6 months of June 28, 2013. It requires the least amount of work initially, but NELs become retroactively effective to Dec. 28, 2012 potentially exposing the city to immediate violations (fines) and 3<sup>rd</sup> party litigation.

### **2) Form a Watershed Management Program (WMP)**

This option allows the city to make a plan, either alone or with other cities, to address MS4 compliance. The WMP outlines the planned process, looking at City (or Group) characteristics to identify efficient source reduction/treatment systems using computer modeling to show methods to reach compliance and allows for an extension to the deadline for compliance. The city can add Low Impact Development (LID) and Green Streets policies into the plan to gain an additional compliance time extension. Implementation of a WMP creates a "safe harbor" by delaying the NEL compliance until the final TMDL deadlines are met as well as protection against 3<sup>rd</sup> party litigation in most cases. Requirements of the WMP are: Prioritize water quality issues, implementation strategies, control measures and Best Management Practices; execute an integrated monitoring program and periodically update the WMP to address data compliance with effluent limitations; and include stakeholders such as a Technical Advisory Committee (TAC) that can participate in the WMP.

### **3) Form an Enhanced Watershed Management Plan (EWMP) with neighboring municipalities through a Memorandum of Understanding (MOU)**

This option has all of the same requirements and benefits of option 2 with the added advantage of coordination of common watersheds through an agreement of the cities that establishes an equitable distribution of costs for MS4 requirements. Compliance timelines are extended 12 months beyond the WMP option but projects must be identified early on and funds allocated within 30 months. Water reuse and infiltration components of the EWMP are taken into account for compliance. By sharing the costs of administration, implementation and monitoring a common watershed, the cities create an economy of scale reducing the financial impact. Unofficially, an EWMP group will also have the added advantage of a collective voice with improved standing before the LAWQCB.

The State agency and environmental groups are to be included in priority setting and implementation and the EWMP must adhere to obligations and policies of the Clean Water Act (CWA). The Regional Board has a great deal of discretion as to what goes into the EWMP and could reject it. But, if storm water infiltration, or capture and reuse achieves the 85<sup>th</sup> percentile for a 24 hour storm, then compliance with MS4 requirements will be met for the drainage area tributary to the multi-benefit regional project(s) regardless of downstream pollutant levels.

Cities have until the effective date of the Permit, or June 28, 2013, to file a Notice of Intent (NOI) to the LARWQCB as to which option they choose.

### **Palos Verdes Peninsula Enhanced Watershed Management Plan (PVPEWMP)**

I would like to share with you a real example of a group of cities embarking upon a EWMP as a possible model for the EWMP option.

Cities on the Palos Verdes Peninsula are proposing to form a EWMP by entering into a MOU which will memorialize a voluntary agreement amongst the Peninsula cities that share common watersheds and allow those cities to find an equitable means to share in planning, implementation and funding of water quality projects. The Palos Verdes Peninsula Watershed Group (PVPWG) has appointed a Peninsula Committee, mainly made up of Public Works employees of the cities in the Group, who meet as needed to coordinate the Plan. The PVPEWMP will have three chapters, one per watershed: Santa Monica Bay; Machado Lake; and LA Harbor. These three watersheds cover all drainage areas of the Peninsula.

Rancho Palos Verdes being the largest city amongst the group (over 50% of the watershed land area) has agreed to be the lead agent.

#### **Two Letters of Intent**

As part of the EWMP group's Notice of Intent, RPV is submitting two Letters of Intent to the LARWQCB before the June 28 filing deadline. One letter expresses our interest in participating in the development of a PVP EWMP and the other letter expresses interest in participating in a Coordinated Integrated Monitoring Program (CIMP) in collaboration with the Palos Verdes Peninsula Watershed Agencies.

The EWMP requires early commitment to at least one project per watershed. These have been tentatively identified in the NOI. A draft MOU, Green Street Policy and LID ordinance will be included in the NOI and will be presented to each agency's governing body sometime this summer for formal approval.

In addition to the EWMP, a corresponding monitoring plan is required. The CIMP is specific to the outfalls and the pollutants of concern and will be developed by December 31, 2013 and submitted to LARWQCB for approval.

#### **Proposed PVPEWMP Structure**

The PVPEWMP will discuss which BMP's and how those BMP's (now enhanced to Minimum Control Measures, or MCMs) will be deployed in our cities based on which pollutants are found to be an issue in the context of TMDL requirements. The PVPEWMP has already identified several projects with cost sharing based on tributary land area of the agencies

involved. RPV has included dedicated funds for this purpose in their 2013-2014 Capital Improvement Plan budget.

Upon approval, wet and dry weather monitoring will begin. When enough data has been collected for a proper analysis, this info will feed into fine tuning the MCMs selected in the EWMP. Some data is available free of charge (Sanitation Districts provides SM Bay Bacteria data, for instance). We will piggy back and share in costs for LA Harbor receiving waters monitoring. Some data we will need to gather ourselves (at the outfall of City drains before San Pedro for instance) to determine what the Peninsula contributes to the LA Harbor data.

## **Rancho Palos Verdes pre-EWMP efforts to address water quality**

Listed below are some of the measures Rancho Palos Verdes has already taken to address storm water runoff before entering into the PVPEWMP:

- A Storm Drain User Fee has been passed to address water quality and storm drains
- Educational stencils and catch screens at storm drain inlets
- Over 1,400 of prime oceanfront developable land preserved under an NCCP agreement as open space providing softscape watershed recapture in lieu of hardscape development.
- LID: Terranea was designed with bioswales, retention ponds and biofilters and received the South Bay Business Environmental Coalition's 2012 SoCal Environmental Excellence Development (SEED) award for Pollution Prevention. Water quality tested offshore of this site is *better* today than before the project was developed, even though they take offsite storm water.
- The Ocean Front Estates development was required to have a large area preserved as native habitat softscape with public access trails.
- Machado Lake Trash Screen Project and MOU approved by Council
- An Environmental Fee is collected from the City's trash hauler and placed into a Storm Water Quality Fund that supports street sweeping and assists in NPDES/storm water quality program implementation and compliance.

RPV is also in the process of drafting a Water Efficient Landscape Ordinance.

## **Heal the Bay Beach Report Card for RPV**

Our healthy tide pools along the RPV coast are the ultimate testimonial to our water control measures. Abalone Cove has made the Heal the Bay's Honor Roll by achieving A+ water quality during summer/winter dry and wet weather conditions. The other two monitored beaches in our city, Long Pont (Terranea) and Portuguese Bend, also achieved a very good to excellent water quality throughout the year with an A and A+ grade during the 2012-2013 reporting period.

The City's Open Space Preserve manager, the Palos Verdes Peninsula Land Conservancy, has been highly praised by Amanda Greishbach, Heal the Bay's Beach Water Quality Scientist. She said "The water quality of the Peninsula beaches is excellent. The Conservancy's work in promoting permeable surfaces, greening and restoring our landscapes helps soak up excess urban runoff that may otherwise pollute the ocean".

## **Other general issues to still to be addressed by Regulatory Agencies**

### **Water Purveyors**

MS4 regulations require water purveyors to report any discharge over 100,000 gallons to the city from where the discharge originated. However, the MS4 does not have any legal authority over the privately owned water purveyors. One option is for cities to enter into an MOU with the water purveyors that operate in their jurisdiction.

### **Reporting Standards**

Until the new MS-4 permitting process with additional TMDLs and NELs has a template for cities to use, cities should be allowed to follow the same format used in previous permitting reports.

## **Issues to be addressed by L.A. County Board of Supervisors**

In the face of the new MS4 regulations, the L.A. County Board of Supervisors, acting as the Board of the LA County Flood Control District, used its District-wide taxing authority to propose a Water Quality Funding Initiative to address a multiple-city jurisdictional compliance with the new MS4 permit requirements. Unfortunately, the Initiative had many flaws. Inadequate notices, projects were not clearly defined (or not defined at all), cities were being lumped together in disjointed watersheds under Watershed Area Groups (WAGs) and distribution of funds to the cities was a minor percentage of taxes collected.

RPV was one example of the imbalance of the Initiative. Our city already has excellent water quality marks within our Santa Monica Bay watershed but our residents were still going to be taxed for projects that would no doubt be implemented in other cities within our assigned WAG. Right out of the gate this was not an equitable path for us nor did it follow the spirit of Prop. 218 which specifically states "*No fee assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel*".

Businesses and schools were affected as well. Instead of rewarding a business like Terranea, who already had outstanding, effective water quality control, the Initiative would have assessed an exorbitant tax on the resort. Not exactly an incentive for businesses to implement environmentally responsible development. School budgets would be impacted as well.

## **TMDL/NEL monitoring coordination with County resources**

The Heal the Bay report card is based upon ocean water samples collected on a regular basis by Los Angeles County Department of Public Health and Sanitation District and the Los

Angeles City Bureau of Sanitation. All bacteria testing results are sent to the Department of Public Health for analysis to determine if State ocean water bacteriological standards are being met.

The County has the equipment, expertise and reporting ability to help those cities bordering along the Santa Monica Bay to meet their monitoring/reporting requirements under the new MS4 permit avoiding city duplication of time and money. Without coordinating with the County, in addition to a City's duplicative effort to collect the necessary data for compliance, the City would have the time and expense of submitting those samples for bacteriological analyses to a laboratory certified by the Environmental Laboratory Accreditation Program for analysis.

A cooperative approach between Santa Monica Bay cities and County with respect to monitoring/testing would have the added benefit of a consistency with past, present and future reporting data and frequency of collection at the same established coastal stations enabling a clearer quantification of water quality history and progress.

This offer to coordinate can apply to any region the County where monitoring of water quality is taking place.

### **Request of the LARWQCB, SMBRC and other regulator y agencies**

I have put forth a representation the efforts Rancho Palos Verdes has taken to address MS4 water quality regulations within our watersheds individually as a City and collectively through the PVPEWMP.

I would propose the Board offer assistance for cities with common watersheds in forming EWMPs (if the cities choose this path) and be allowed as a subset of a WAG. The Board, as well as other regulatory agencies including the SMBRC, should replace a top down approach with a bottom up approach by reaching out to the individual cities to determine what specific water control measures the cities, or individual businesses, have undertaken, or are planning to undertake, then apply some form of credit toward MS4 compliance for those efforts. The Agencies should take leadership in assisting the cities with informational resources, technical support and program guidance that will help the cities move forward in satisfying municipal compliance with the new MS4 requirements.

Thank you and I look forward to the Agencies working with the cities in a mutually beneficial course of action to achieve clean, safe water quality for all.

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