

Transmitted via US Mail and Email

*Water II
Johnson*

August 1, 2014

Ms. Kathleen H. Johnson, Director
Enforcement Division
United States Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject: Orange County Municipal Separate Storm Sewer (MS4) Compliance Audit Report

Dear Ms. Johnson:

The County of Orange (County) appreciates the opportunity to respond to the findings in the Orange County Municipal Separate Storm Sewer (MS4) Compliance Audit Report (Audit Report or Report) based on the audit your staff conducted on August 26, 2013 of the County's compliance, as Principal Permittee, with the Monitoring and Reporting requirements of NPDES Permit No. CAS618030 (Permit). While we welcome your review of the annual reports and water quality monitoring program, we are concerned that the Audit Report's principal finding is based on an incorrect interpretation of the Permit. In particular, the County does not agree with the assertion that its application of the California Toxics Rule (CTR) represents a significant program deficiency.

The County is also concerned with the basis of the two broad recommendations for program improvement. These recommendations, as discussed below, appear to arise from an incomplete understanding of the activities performed by the Principal Permittee and the Permittees. Each recommendation is largely an artifact of the limited scope of the audit and not a shortcoming of the Orange County Stormwater Program.

The specific basis for each of the County's concerns is discussed below.

The County failed to compare 4-day dry weather receiving water composite sample results against the California Toxics Rule (CTR) criteria as required by Section III.1(a) of the M&RP requirements of the Permit.

While the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP), as amended in 2005, is the implementation tool for applying the CTR to wastewater discharges, no equivalent tool such as the SIP or an EPA rule is available for

applying the CTR to stormwater and non-stormwater discharges. Therefore the County used best professional judgment to craft the approach described in each annual report, where the CTR criteria are used as benchmarks for comparison purposes in evaluation of both wet and dry weather mass emission monitoring site discharges. The specific use of the chronic or acute criteria, which is not specified in the Permit, is predicated on the method of sample collection. For example, in the 2011-12 *Unified Report* (see Page C-11-4) the County states:

The concentrations of dissolved metals and total recoverable selenium in each composite sample collected in the mass emissions program element are compared to the acute toxicity criteria from the CTR. The time-weighted mean concentrations for periods spanning 3.5 days or more are compared to the chronic criteria. Freshwater criteria are used to evaluate channel discharges. Attachment C-11-II – Table 3 presents all of these data and Attachment C-11-II – Table 7 summarizes the comparisons to the CTR criteria. Regional patterns of CTR exceedances during dry weather and wet weather conditions are presented in Attachment C-11-1 - Table 2 and Attachment C-11-1 - Table 3.

The County believes that the methodological basis for the Mass Emissions Monitoring element of the 2003 Monitoring Program is both robust and entirely in compliance with the requirements of the Permit. Further, this Program was subject to public review and was explicitly approved by the Executive Officer on July 15, 2005 (see Attachment 1). Consequently, the perceived misapplication of the CTR chronic criteria should be presented in the Audit Report as a matter of differing technical opinion and not a program deficiency.

The County also does not agree with the assertion that that the lack of sampling and/or analysis of dry weather composite samples against the chronic CTR criteria limits our ability to identify trends, potential sources and appropriate responses to exceedances of water quality standards. The Dry weather Reconnaissance Program and the use of formal statistical tools (tolerance intervals and control charts), was specifically designed to enable the Permittees to systematically prioritize problematic sites, compare conditions to the regional urban background, and track trends over time (see Attachment 2: *Assessing Urban Runoff Program Progress Through A Dry Weather Hybrid Reconnaissance Monitoring Design*; Bernstein et al, 2009). When the 2003 Monitoring Program is considered in its entirety, including the Dry Weather Reconnaissance element and short term special studies, we believe the informational needs identified in the Audit Report are being comprehensively addressed.

The County should encourage the Permittees to routinely participate in dry weather reconnaissance monitoring and conduct follow-up Illicit Discharge/Illicit Connection (ID/IC) investigations to identify and eliminate the sources of targeted pollutants.

The reporting of Permittee participation in ID/IC investigations that are initiated by County field monitoring staff is described in *Section C-10.5 ID/IC Dry Weather Monitoring* of the 2011-12 *Unified Report*:

During the reporting period, notifications of illegal discharges and NALs exceedances [in the San Diego Region] were made from the field by monitoring staff to city Authorized Inspectors (see Tables C-10.5 and C-10.6).

*For a complete discussion on results of the Dry Weather Monitoring [Santa Ana Region] and NALs Monitoring Programs [San Diego Region], please see Section C-11.0. **The individual jurisdictional PEAs should be consulted for information on city responses to these notifications** [emphasis added]. See Table C-10.5: Santa Ana Region Dry Weather Monitoring Notifications, 2011-12 Reporting Period.*

The basis for the audit recommendation is the assertion that no source investigations were initiated by the Permittees. However, the scope of the subject audit did not appear to include review of the jurisdictional Program Effectiveness Assessments (PEAs), which are individually prepared by each Permittee and which are intended in the annual reporting documentation to present this information.

The County should prioritize the development of field level pilot projects to be implemented by the Copermittees to address water quality impairments and/or concerns identified through discharge and receiving water monitoring.

The stated scope of the audit was *the County's compliance with the (1) Monitoring, and (2) Reporting program requirements of the Permit* (Audit Report, page 1.). However, the Audit Report's consideration of Section I.B(3)(cited in the Report as Section I.B(5)) appears to expand the scope to the provision of technical and administrative support. By choosing to move outside the scope of the audit, EPA did not provide County staff the opportunity to discuss the many activities that it is undertaking to *"provide technical and administrative support and inform the Co-permittees of the progress of other municipal programs, pilot projects, research studies, etc. (Section I.B(3))."*

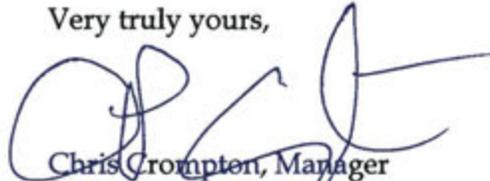
The County's administrative support of the Orange County Stormwater Program is described in Section 2.0 of the 2011-12 Unified Report, and includes administration of a four tier management framework comprising committees, sub-committees and task forces, administration of separate watershed management committees, distribution of a monthly newsletter, hosting of an on-line message board for program managers and hosting of California Stormwater Quality Association webcasts.

To ensure that the County is aware of relevant pilot projects and research studies, Principal Permittee staff are represented on the Commission of the Southern California Coastal Water Research Project, the southern California Stormwater Monitoring Coalition, many Committees of the California Stormwater Quality Association, many committees of the periodic Bight survey (currently Bight 2013), the Coastal Coalition, the Beach Water Quality Workgroup, and many grant and focus groups of the State Water Resources Control Board. These responsibilities reflect the County's interest in complementing its own monitoring programs with the work of large monitoring consortia examining key research issues with regional applicability. The County believes that it delivers comprehensive administrative and technical support to the Permittees and that is entirely in compliance with Section I.B(3) of the Permit.

The County would welcome the opportunity to discuss the Audit Report with you and your staff and requests correction in the matter of the finding of a program deficiency. Please direct any questions regarding this letter to Richard Boon at (714) 955-0670.

Ms. Kathleen H. Johnson
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Very truly yours,



Chris Crompten, Manager
Water Quality Compliance

CC (electronic copies only):

Greg Gholson, USEPA
Michelle Beckwith, Santa Ana Regional Board
NPDES Technical Advisory Committee
Orange County Stormwater Program Permittees

Attachment 1: Approval of the Water Quality Monitoring Plan for the Areawide Storm Water Runoff Permit, Order No. R8-2002-0010 (NPDES No. CAS 618030)

Attachment 2: Bernstein, B. et al, 2009, Assessing urban runoff program progress through a dry weather hybrid reconnaissance monitoring design, Environ Monit. Assess (2009) 157:287-304