

March 25, 2014



VIA ELECTRONIC MAIL

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Re: SWRCB/OCC File A-2236(a) thru (kk) – Objections to Proposed Order on
April 1, 2014 Agenda – Item 5

Dear Ms. Pane:

These objections are being submitted on behalf of the Cities of Duarte and Huntington Park (“Cities”), both of whom are Petitioners challenging portions of the 2012 Los Angeles Municipal Separate Storm Sewer System (“MS4”) Permit (hereafter “LA Permit”). We have reviewed a recently posted Proposed Order of the State Water Resources Control Board (“State Board”) concerning the above referenced petitions, wherein the State Board is proposing, as an “uncontested” agenda item, not to act on the various pending petitions themselves, but to instead review the LA Permit “on its own motion.” The Cities hereby object to the Proposed Order on the grounds set forth below, and request that the Proposed Order not be entered and that the State Board instead seek approval from the petitioners to extend the time upon which the State Board is to act on the pending petitions by an additional sixty (60) days, pursuant to Title 23 California Code of Regulations section 2050.5(b).¹

Initially, the Cities object to the Proposed Order on the grounds that the State Board is not proposing to act on the pending petitions within the 270 days provided pursuant to section 2050.5(b). Section 2050.5(b) provides that the State Board shall review and act on a petition within 270 days from the date the State Board has provided written notification to the petitioner of the need for a response by the regional board. That period of time is “not to exceed 60 days with written agreement from the petitioner.” Pursuant to section 2050.5(b), if “a formal disposition is not made by the State Board within these time limits the petition is deemed denied.” (§ 2050.5(b).)

¹ All section references are to Title 23 of the California Code of Regulations, unless otherwise specified.

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Because the 270 day period on the current petitions is about to expire (on or about April 4, 2014), the Proposed Order in question is objectionable as it does not constitute “action” on the “petitions” within the time required by the regulation. As such, without more, the Proposed Order would legally result in the pending petitions being “deemed denied” by operation of law. The Proposed Order does not and in fact cannot, without input and agreement from the petitioners, avoid the clear time requirements of the regulations, requirements which are expressly designed to provide timely review of a petitioner’s pending petition.

Second, the Cities object to the Proposed Order on the grounds that the State Board has not identified what issues within the LA Permit it will be addressing “on its own motion,” and that the Cities are therefore unaware of the issues the State Board will be acting upon, as compared to the issues that have been raised in the Cities’ petition. At a minimum, the Cities and the public are entitled to notice of the particular issues/terms of the LA Permit the State Board is to be addressing when reviewing the LA Permit on its own motion.

Third, the Cities object to any attempt by the State Board to substitute its “motion” to review the LA Permit with the Cities’ “petition.” Under Water Code section 13320, and the regulations thereunder, the Cities have a right to petition any action or inaction of the regional board, and to administratively litigate its objections. The Cities further have a right, pursuant to Water Code section 13330, to pursue judicial review of any determination by the State Board on their petition (such action must be filed within thirty (30) days of the decision), including any decision by the State Board to deny review of any issue. (Water Code § 13330(a) & (b).) Accordingly, any decision by the State Board to attempt to substitute its own “motion” for the Cities’ “petition” would amount to a denial of the Cities’ due process rights, as it would force the Cities to accept the State Board’s characterization of the issues for purposes of subsequent judicial review, and would prevent the Cities the opportunity of challenging the State Board’s denial of review for issues raised but not addressed by the Cities in their petition.

In short, the Cities object to the Proposed Order, as it appears to be an attempt by the State Board to avoid the clear requirements of the regulation, while at the same time, limiting, if not denying, the Cities’ rights to due process of law.

In light of the above objections, the Cities must request that the Proposed Order be taken off of the “uncontested” portion of the upcoming Agenda on April 1, 2014, and that instead the terms of the Proposed Order be addressed during a hearing before the Board. Further, the Cities request that their pending petitions not be “deemed denied,” but rather that an additional sixty (60) days be provided to the State Board to act on the Cities’ petition. Moreover, the Cities request that the State Board identify the issues/terms of the LA Permit it plans on reviewing as a part of its own motion.

Finally, please consider this letter as confirmation of a written agreement from the Cities to extend the time on their pending petition by an additional sixty (60) days. If more time is needed than sixty (60) days, the Cities would consider exploring putting their petition in

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abeyance for a short period of time in order to accommodate the State Board's timing concerns, assuming all of the remaining petitions are similarly placed in abeyance.

If you have any questions with respect to the above, please do not hesitate to contact the undersigned. We look forward to having the Proposed Order modified appropriately and to the Cities' Petition not being "deemed denied" by operation of law, but instead that the time for the State Board to act on the Cities' Petitions be extended by an additional sixty (60) days. Thank you.

Sincerely,

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