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CITY OF BELLFLOWER
"GROWING TOGETHER"

July 22, 2009

Mr. Ivar Ridgeway
Stormwater Permitting Unit
Los Angeles RWQCB
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Incorporating the Los Angeles River Trash TMDL into the County of Los Angeles Municipal Stormwater Discharge Permit (Permit No. CAS004001)

Dear Mr. Ridgeway:

The City of Bellflower is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the County of Los Angeles Municipal Stormwater Discharge Permit (NPDES Permit). Although our City is not located in the Los Angeles River watershed, we are providing comments based on the precedent that this action would set for TMDLs in the San Gabriel River watershed. The public notice for the NPDES Permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under State or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, San Gabriel River, and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities (League), an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff.

TMDL implementation is a daunting and costly task for local government. The costs estimated by the Los Angeles Regional Water Quality Control Board (Regional Board) are in the hundreds of millions for our region. For example, Regional Board staff estimated that compliance costs will range between $2.1 million and $2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the high costs of TMDL implementation, the Los Angeles River watershed communities are currently investing over $6 million in scientific studies alone in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Regional Board's need to place numeric limits into the NPDES Permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Regional Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES permit program from EPA over two decades ago. Both EPA policies and State law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor State law provisions require the imposition of numeric limits on municipal urban runoff. Specific State law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic

recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... Therefore EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through the NPDES Permit.

The State Water Resources Control Board (State Board) issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into the NPDES Permit:

- "Stormwater permits must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality based effluent limits." (State Board Order WQ 98-01, pg. 12)

- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)

- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater, June 19, 2006, pg. 8)*

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES Permit, instead of placing the TMDL into the permit. The Regional

Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

TMDL MOAs could include appropriate Basin Plan tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOAs could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Our City takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of NPDES Permit to insert the TMDLs. We believe that the Regional Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,

Michael J. Egan
City Manager

cc: City Council
City Attorney

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