



CITY OF SOUTH EL MONTE

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November 9, 2009

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of South El Monte ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

The City incorporates by reference comments prepared by Richard Montevideo on behalf of the Coalition for Practical Regulations entitled: *Comments on Proposed Modifications to the County of Los Angeles Municipal Separate Storm Sewer System Permit Regarding the Los Angeles River Trash Total Maximum Daily Loads, 5*, bearing the date of November 2009.

The City, in addition, has the following two concerns regarding the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the LA MS4 Permit:

1) The Clean Water Act's Prohibition on Antibacksliding

The City appreciates the fact that the proposed permit revisions include a proposed review and

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reconsideration of the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocations has been achieved. The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. As you know, 33 USC §1342 (o) and 40 C.F.R. §122.44(1)(1) (which contain the antibacksliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.


If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. The City would greatly appreciate a response from the Regional Board on this specific issue.

2) The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear

It is not clear when the review/reconsideration step of the final Waste Load Allocations will take place. Table 6 (Implementation Schedule) of the LA River Trash TMDL provides that a 50% reduction of the Baseline Waste Allocations must be achieved by September 2009 and the compliance point of 50% of the Baseline Waste Load Allocations must be reached by September 2010. Furthermore, Page 19 of the Fact Sheet indicates that the Los Angeles County Department of Public Works reported a 50% decrease in trash entering catchbasins since adoption of the current LA MS4 Permit. This means the Regional Board should have conducted the review and reconsideration step or should conduct this step no later than September 2010 (for the compliance point of 50%). If this is the case, it is prudent not to incorporate the LA River Trash TMDL into the LA MS4 Permit until after the reconsideration step has been completed. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.

If you require additional information or would like to discuss this matter, please feel free to contact me at your convenience.

Sincerely,


Anthony Ybarra
City Manager
City of South El Monte

cc: Quinn Barrow, City Attorney
Candice K. Lee, Assistant City Attorney