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Edmund G. Brown Jr.
Governor

Public Notice No. 11-004

NOTICE OF PUBLIC HEARING

TENTATIVE ORDER ESTABLISHING WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH (NPDES PERMIT NO. CAS004001)

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities therein (hereinafter Permittees) discharge waste from their Municipal Separate Storm Sewer Systems (MS4). The discharges flow to water courses within the Los Angeles County Flood Control District and into surface water bodies of the Los Angeles Region. These discharges were previously regulated under countywide waste discharge requirements contained in Order No. 01-182 adopted by this Regional Board on December 13, 2001. Order No. 01-182 was subsequently amended by this Regional Board on September 14, 2006 by Order No. R4-2006-0074 to incorporate the Santa Monica Bay Beaches Dry Weather Bacteria TMDL (SMB Bacteria TMDL), on August 9, 2007 by Order No. R4-2007-0042 to incorporate the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, and December 10, 2009 by Order No. R4-2009-0130 to incorporate the Los Angeles River Watershed Trash TMDL. As a result of a legal challenge to Order No. R4-2006-0074, the Los Angeles Superior Court issued a peremptory writ of mandate on July 23, 2010 requiring the Regional Board to void and set aside Order No. R4-2006-0074 amending Order No. 01-182. The Regional Board will take its final action to comply with the Court's writ on April 7, 2011 (a separate notice concerning that action is forthcoming).

Immediately after taking action to comply with the Court's writ, the Regional Board will hold a hearing to consider reissuance of the Los Angeles County MS4 Permit for an 18-month period. The intended purpose of issuing this limited-term permit is to reincorporate the aforementioned voided SMB Bacteria TMDL provisions. Compliance with the SMB Bacteria TMDL was supposed to have been achieved by July 15, 2006. Over four years later, compliance has not been achieved. As a result, exceedances of bacteria objectives continue at Santa Monica beaches posing health risks to millions of beachgoers. Thus, staff of the Regional Board will be recommending that the Regional Board reissue the Los Angeles County MS4 Permit and reincorporate the SMB Bacteria TMDL provisions prior to the start of this upcoming summer season.

With the exception of certain modified or new findings to reflect existing facts or law, and new findings or definitions to support provisions related to TMDL implementation, the Tentative Order contains the same substantive requirements that this Regional Board imposed in 2001 when it adopted Order No. 01-182, as well as amendments to Order No. 01-182 adopted in 2007 and 2009. While Order No. R4-2006-0074 was ultimately voided and set aside, the

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Permittees in the Santa Monica Bay Watershed Management Area were required to comply with the requirements of that amendment for approximately four years until such time as those provisions were voided. Thus, the Tentative Order does not require the Permittees to comply with any requirements that they have not already been required to comply with in the past.

Accordingly, the Regional Board tentatively proposes to reissue the Los Angeles County MS4 Permit, which includes an associated Monitoring and Reporting Program, and rescind the requirements in Order No. 01-182 (as amended).

This notice sets forth the procedures and processes the Regional Board will use at this hearing.

I. HEARING DATE AND LOCATION

The Regional Board is scheduled to hold a public hearing to consider this matter at its regularly scheduled board meeting on:

Date: April 7, 2011
Time: 9:00 a.m.
Place: Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90071

Please check the Regional Board's website (<http://www.waterboards.ca.gov/losangeles/>) for the most up-to-date public hearing location as it is subject to change. If there should not be a quorum on the scheduled date of this hearing, all items will be automatically continued to the next scheduled meeting. A continuance of this item will not automatically extend any deadlines set forth herein.

II. SCOPE OF HEARING

As this matters concerns reissuance of the Los Angeles County MS4 Permit, parties and interested persons may comment upon any portion of the Tentative Order. However, please be advised that the vast majority of the requirements in the Tentative Order are existing requirements, which the Permittees have been operating under since 2001, or since amendments to Order No. 01-182. Further, many of the requirements adopted in 2001 in Order No. 01-182, and which have been carried over into the Tentative Order, have already been subject to litigation. That litigation resulted in an unanimous decision by the California Court of Appeal in favor of the Regional Board and upholding Order No. 01-182 (as adopted in 2001) in its entirety. Thus, while parties and interested persons may comment on any portion of the Tentative Order, comments that raise issues that have already been litigated will be responded to accordingly.

III. NATURE OF HEARING

This proceeding will be a formal adjudicatory proceeding pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. AVAILABILITY OF DOCUMENTS

The Tentative Order (which includes the Tentative Monitoring and Reporting Program), Fact Sheet, Administrative Record Index, and other information and documents relied upon are posted on the Regional Board's website at:

www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml.

These documents are also available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of documents in the Administrative Record may be made by calling the Los Angeles Regional Board at (213) 576-6600. Comments and responses to comments and other subsequent relevant documents will be available online as they are generated.

All the materials identified in the Administrative Record Index will be included in the Administrative Record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the agenda packet. However, the entire Administrative Record may not be present at the hearing. Should any parties or interested persons desire Regional Board staff to bring to the hearing any particular documents in the Administrative Record they must submit a written or electronic request to the Regional Board staff member(s) identified in Section X. below no later than **5:00 pm on March 18, 2011**. The request must identify the documents with enough specificity for Regional Board staff to locate them.

V. PARTICIPANTS TO THIS HEARING

Participants in this proceeding are identified as either "Parties" or "Interested Persons." Designation as a Party is not necessary to participate in this proceeding. Both Interested Persons and Parties will have the opportunity to present written and/or oral comments about the reissuance of the Los Angeles County MS4 Permit. Both Interested Persons and Parties may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

A. Interested Persons

Interested persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a party. Interested persons may present written and/or oral comments, as provided in Section VI. below, but they may not present evidence. Interested persons are not subject to cross-examination and may not cross-examine witnesses.

B. Parties

Parties are those persons or organizations anticipated to have the greatest interest in the outcome of the hearing. They are generally expected to take a leadership role in presenting any evidence or argument about the nature of the matter under consideration. Parties to the hearing

may submit written evidence, summarize their evidence orally at the hearing, or cross-examine other parties' witnesses (if any are called). Parties are subject to cross-examination about any evidence they present.

The following are the parties to this proceeding:

1. Los Angeles County Flood Control District
2. County of Los Angeles
3. Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, La Mirada, La Puente, La Verne, Lakewood, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Walnut, West Covina, West Hollywood, Westlake Village, Whittier, and Vernon

Any other persons or organizations who wish to participate in the hearing as a party shall request party status by submitting a written or electronic request to the Regional Board (as provided in Section X. below) no later than **5:00 pm on March 2, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. Determinations will be based on whether their participation as a party will further the development of the issues before the Regional Board. Those submitting requests for party status will be notified before the hearing whether the request is granted or denied. All parties will be notified if other parties are designated.

C. Regional Board Staff

Regional Board staff is not a party to this proceeding. This is a proceeding to consider adoption of a permit, which does not involve investigative, prosecutorial, or advocacy functions. Staff's proposals, recommendations, and their participation in this proceeding exist for the purpose of advising and assisting the Regional Board. Likewise, attorneys for the Regional Board will advise and assist the Regional Board, which includes the board members and its entire staff. Given the nature of this proceeding and the limited facts in dispute, assigning a separate staff to "advocate" on behalf of a particular position would not further the development of the issues before the Regional Board.

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

Persons wishing to comment on the Tentative Order, or submit evidence for the Regional Board to consider, are invited to submit them in writing. To be evaluated and responded to by Regional Board staff, included in the Regional Board's agenda binder, and fully considered by the Regional Board members in advance of the hearing, all written comments and evidence must be submitted to the Regional Board, as provided in Section X. below, and received at the Regional Board office no later than **5:00 pm on March 2, 2011**. Written comments submitted through email are requested to be transmitted in Microsoft Word format.

Pursuant to section 648.4, Title 23 of the California Code of Regulations, untimely submittal of written comments or evidence will not be allowed or accepted into the Administrative Record without a showing of good cause for the delay, and in no event if any party would be unduly prejudiced by the late submittal or if staff or the Regional Board would not have an adequate opportunity to review, consider, and respond to the comments or evidence.

VII. EX PARTE COMMUNICATIONS PROHIBITED

Parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Regional Board. An *ex parte* communication is a communication not authorized in the California Government Code, to a Regional Board member from any person, about a pending matter, that occurs in the absence of other parties and without notice and opportunity for the parties to respond. The California Government Code generally prohibits the board members from engaging in *ex parte* communications during permitting, enforcement, or other "quasi-adjudicatory" matters. As a permitting proceeding, Regional Board members may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice.

VIII. HEARING PROCEDURES

Adjudicative proceedings before the Regional Board generally will be conducted in the following order:

- Administration of oath to persons who intend to testify
- Regional Board staff presentation
- Designated parties' presentation
- Interested persons' comments
- Questions from the Regional Board to parties
- Questions from the Regional Board to Staff
- Deliberations (in open or closed session)
- Regional Board decision

While this is a formal administrative proceeding, the Regional Board does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom. Each party will be advised after the receipt of public comments, but prior to the date of the hearing, of the amount of time the party will be allocated for its presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties

should contact the Regional Board staff, as provided in Section X. below, no later than **5:00 pm on March 18, 2011** to state how much time they believe is necessary for their presentations. It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Oral comments may be limited to 3 minutes each for their comments, in the discretion of the Chair, depending on the number of persons wishing to be heard. Parties and interested persons with similar concerns or opinions are encouraged to choose one representative to speak, and are encouraged to coordinate their presentations with each other, and to summarize their written comments. Repetitive comments will not be allowed. The Regional Board will include in the Administrative Record written transcriptions of oral testimony or comments that are made at the hearing.

IX. OBJECTIONS TO MANNER OF HEARING

Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Regional Board staff member identified in Section X. below no later than **5:00 pm on March 2, 2011**. The Regional Board will endeavor to accommodate reasonable requests.

Objections to (a) any procedure to be used or not used during the hearing, (b) any document or evidence in the administrative record, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Regional Board staff member identified in Section X. below no later than **5:00 pm on March 2, 2011**. Any objections related to the amount of time allocated for parties' presentations must be submitted within two business days of notice thereof.

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will be addressed prior to and will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

X. REGIONAL BOARD STAFF CONTACTS

Any communications with the Regional Board prior to the hearing should be directed to:

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150
iridgeway@waterboards.ca.gov

Please submit electronic comments to: LAMS4April2011@waterboards.ca.gov.

Date: January 31, 2011