

**Comments Received on draft Ventura County MS4 Permit
December 27, 2006**

**From: Donald L. Wolfe, Director
Department of Public Works
County of Los Angeles
And
Mark Pestrella, Assistant Deputy Director
Watershed Management Division
County of Los Angeles**

To: RWQCB-LA

Date: March 7, 2007



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

DONALD L. WOLFE, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

March 7, 2007

IN REPLY PLEASE
REFER TO FILE: WM-9

Mr. Jonathan Bishop
Executive Officer
California Regional Water Quality
Control Board - Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Dr. Xavier Swamikannu

Dear Mr. Bishop:

DRAFT VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

Public Works has reviewed the proposed draft Ventura County Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permit made available for public comment by the Regional Water Quality Control Board. We understand this draft permit may be used as a template for the next Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permit in the County of Los Angeles. Our comments are enclosed.

Please note that the comments enclosed in this letter represent our current understanding of the draft Ventura County permit. Public Works reserves the right to make further or different comments prior to the adoption hearing for the Ventura County Permit or with respect to the forthcoming County of Los Angeles permit.

If you have any questions, please contact Mr. Daniel Lafferty at (626) 458-4325.

Very truly yours,

DONALD L. WOLFE
Director of Public Works

for MARK PESTRELLA
Assistant Deputy Director
Watershed Management Division

FW:sw
P:\wmpub\Secretarial\Letters\NPDES Permit.doc\C

Enc.

County of Los Angeles Department of Public Works
Comments in Response to the
Draft Ventura County Municipal Separate Storm Sewer System NPDES Permit
Dated December 27, 2007

A. General Comments

A1: Permit Renewal Process

One of the strategic plan goals for the Department of Public Works is "proactive compliance with environmental regulations". To achieve this goal, it is important to start with common-sense environmental regulations designed to cost-effectively reduce stormwater and urban runoff pollution. A cooperative Regional Board-permittee relationship in which ongoing dialog facilitates mutual understanding forms the foundation for such regulations. In the end, it is our constituencies who benefit from this cooperative spirit as it leads to more efficient expenditures of public funds. The Department hopes that, in future permit renewal processes such as concerning the renewal of the Los Angeles County permit, the Regional Board will involve the permittees as early as possible including providing them with advanced copies of the draft permit, well ahead of the public comment stage.

A2: Municipal Action Levels (MALs)

The Municipal Action Limits appear to be numerical limits, which were determined not to be feasible at this time by the Storm Water Panel Recommendations to the California State Water Resources Control Board in their document entitled, *The Feasibility of Numeric Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*. (the "Blue Ribbon Panel.") They should be removed from the draft permit, and the RWQCB should use the existing system of TMDLs, the Basin Plan, the Ocean Plan and other applicable water quality objectives to enforce the permit. Exceedences of constituents identified by the permittees should be reviewed by RWQCB staff, and the existing permit mechanisms for identifying and mitigating sources of pollution, including exceedences identified in the annual reports, should be utilized fully before implementing numerical limits in the municipal permit.

Moreover, using MALs or any other numeric threshold to quantify the technology-based Maximum Extent Practicable (MEP) standard is inappropriate. The proposed MAL approach would require the implementation of additional management measures to reduce stormwater pollution when certain triggers are reached, presuming a known cause-effect relationship between management actions and receiving water quality. Based on our experience such a relationship

does not exist today. Forging ahead with BMP implementation without a better understanding of this relationship would most likely lead to a waste of public funds. The use of the MALs or other numeric limits to establish a MEP standard is arbitrary because the practice does not take technological effort or economics into account. The MEP standard necessarily must consider what efforts are technologically and economically feasible, because these factors define what is "practicable." The MALs, however, which simply represent an arbitrary selection of median values of stormwater quality samples collected across the country in a national database, do not have any connection to the efforts that would be required to attain them.

Instead of establishing action levels at this time, we believe the priority should be to better understand the cause-effect relationship between management actions and receiving water quality by 1) making advances in the area of program effectiveness measurement and 2) developing predictive watershed models that would assist stormwater managers in making strategic BMP implementation decisions. Efforts in both areas are in progress, led by the California Association of Stormwater Quality Agencies (CASQA) and the Southern California Coastal Research Project (SCCWRP), respectively. We recommend the Regional Board and permittees cooperatively work toward the common goal of finding cost-effective solutions to reduce storm and urban runoff pollution.

A3: Incorporation of TMDL Numeric Waste Load Allocations (Finding D4 and Part 6).

The County has previously objected to the inclusion of TMDL numeric WLAs into the Los Angeles County Municipal Stormwater NPDES Permit. The grounds for our objections, which focus on the improper incorporation of numeric limits, were described in a letter to the Executive Officer dated June 20, 2006. We hereby incorporate those same objections by reference. Moreover, simply incorporating the WLAs, without a separate examination of whether the permittees' efforts to attain the WLAs would comply with the MEP standard, is arbitrary and capricious. In adopting the TMDLs, the Regional Board made specific representations that it would hold hearings before incorporating the TMDLs into an enforceable permit. Such hearings would allow permittees and other interested parties to comment on the MEP issue, which was not considered by the Board when the TMDLs were originally adopted. (E.g., Resolution 2004-019R, Finding 4 (Malibu Creek Bacteria TMDL.) The draft permit does not inform the community as to whether any analysis has been undertaken by staff to determine whether the WLAs can be met using MEP. Because this issue must be determined, we recommend that the next draft of the permit contain an analysis of MEP for each WLA, as to which permittees and other interested parties can comment.

A4: Inspection Requirements

The draft permit contains a number of inspection requirements which are not found in the CWA regulations, including requirements to inspect various commercial and industrial facilities and construction sites. Because these requirements are not found in the CWA regulations, their inclusion should be subject to economic review, as required by the Supreme Court in *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 618. Also, these separate state requirements represent an unfunded state mandate.

A5: Impacts on Housing

The Development Construction Program set forth in Part 4.F of the Draft Permit would affect the construction of housing, as it limits work during the wet season and mandates other requirements that will increase the cost of development and potentially slow the rate of construction. Other aspects of the Draft Permit also may affect housing. Staff should set forth what evidence it has considered with respect to these specific impacts.

A6: Watershed Ecological Restoration Planning

This requirement in Part 5 of the Draft Permit may have serious implications for the Permittees. Staff should meet with interested parties to discuss this item.

B. Comments Relating to the Findings

- B1: Finding D4, which states that the Regional Board will incorporate the monitoring requirements for TMDL compliance, does not reflect that the Regional Board has made the findings required by Water Code § 13267 regarding the burden and benefits of the monitoring programs. Also, as noted in our General Comments, a separate MEP analysis is required with respect to the incorporation of the WLAs in the Permit.
- B2: Finding E14(a) references Board Order 01-182 and litigation arising in the Los County Superior Court concerning SUSMP provisions. That Order and the litigation are not relevant to Ventura County, as they covered only Los Angeles County.
- B3: Finding F4 appears to be prescriptive, requiring Permittees to address pollutants that may cause or contribute to water quality impairments with "all necessary control measures." Prescriptive findings are not an enforceable part of the Permit and are thus not appropriately included.
- B4: Finding F7 asserts that the requirements of the Draft Permit "have been prescribed to be consistent with" the Clean Water Act, and thus would not require the consideration of economic factors under the *City of Burbank* case. There are a number of requirements in the Draft Permit which clearly exceed the

requirements of federal law and regulation, as will be noted below, making erroneous the finding's conclusion that the provisions "are no more stringent than that required by federal law."

- B5: Finding F11 is prescriptive, as it requires that "Permittees shall implement a timely, comprehensive, cost-effective storm water pollution program to reduce the discharge of storm water from the permitted areas to not exceed the MALs." Moreover, the Finding states that on and after the third year of the Permit, two or more exceedances of a MAL "will be construed as a failure to implement adequate control measures and will be considered a violation of the MEP provisions of this Order." In addition to the improper prescriptive nature of the Finding, as noted above in our General Comments, use of the MALs as a determinant of MEP compliance is improper because the MALs do not represent an evaluation of what may be considered to be technologically or economically feasible. Also, use of the MALs as enforcement tools is contrary to the recommendations of the Blue Ribbon Panel. Finally, incorporation of the MALs as enforceable water quality standards (since their violation will be construed as a violation of the Order) is improper because the MALs have not been properly adopted as water quality objectives pursuant to Water Code § 13241.
- B6: Finding F15 recites that the Order "takes into consideration the housing needs in the area." The finding should more clearly indicate how the Board has made this determination, especially in light of the new curbs on development contained in Parts 4E and F of the Draft Permit.
- B7: Finding F16 recites that the Regional Board "considered costs in preparing this Order." The finding should clearly state how the Board considered costs. For example, what estimates of implementation costs were provided to the Board? How were those cost estimates derived? How did those estimates relate to the specific facts of Ventura County?

C. Comments Relating to Part I, Discharge Prohibitions

- C1: Part 1.A.(1) and (2) are flat prohibitions that do not reference the MEP standard. These prohibitions raise issues related to the fact that exceedances of water quality standards already are occurring, as represented by the waterbodies on the 303(d) lists and those subject to TMDLs. Thus, these sections of the draft permit are impossible to comply with before the inception of the permit. Provisions that are impossible to comply with under the Clean Water Act have been struck down by the courts. See *Hughey v. JMS Dev. Corp.* (11th Cir.) 78 F.3d 1523, cert. den. 519 U.S. 993 (1996). Also, these prohibitions appear to be duplicated, at least in part, by Parts 2.1 and 2.2. In the previous version of the permit, Part 1 was limited to the prohibition of non-stormwater discharges into the MS4.

C2: Part I.B requires prohibition of non-storm discharges into both the MS4 and to "watercourses." While the MS4 clearly is subject to the terms of the Draft Permit, the Order does not apply to natural watercourses or other waterbodies that are not defined as part of the MS4. This provision should be clarified accordingly. Also, the permit should include a provision which would enable a permittee to prohibit conditionally exempt discharges which are determined by the permittee to be in violation of local ordinances. This would provide additional authority to permittees to enforce and prohibit discharges that may be considered a nuisance.

D. Comments Relating to the Receiving Water Limitations

D1: Parts 2.1 and 2.2 are flat prohibitions that do not reference the MEP standard. These prohibitions raise issues related to the fact that exceedances of water quality standards already are occurring, as represented by the waterbodies on the 303(d) lists and those subject to TMDLs. Thus, these sections of the Draft Permit are impossible to comply with from the inception of the Permit. Such provisions under the Clean Water Act have been struck down by the courts. See *JMS* case, cited above. Also, requiring MS4 discharges to meet numeric water quality standards was an approach rejected by the Blue Ribbon Panel, as noted above. Finally, Part 2.1 references "water quality standards," which is an undefined term, making the provision vague and ambiguous.

D2: Part 2.3 describes a process by which compliance efforts to achieve receiving water limitations ("RWLs") can be reviewed, and, if the RWLs are not being achieved, additional BMPs can be identified and implemented. It is this process, one recommended by the Blue Ribbon Panel, that should replace the RWL compliance program for the Draft Permit.

D3: Part 2.4 provides to members of the public the opportunity to petition the Executive Officer if they have "documentary evidence" of a RWL violation. This provision is not authorized by any part of the Clean Water Act or the Porter-Cologne Act. The provision places such members of the public in a privileged position vis-à-vis all other interested parties, including the Permittees. The provision has the potential to encourage members of the public to undertake their own monitoring, an action which may lead to harm to the individuals involved in the monitoring. The provision also increases the burden on Permittees by forcing them to address potentially incorrect allegations of RWL violations while attending to all other requirements of the permit. Members of the public are always free to provide information to Regional Board staff if they believe that the RWLs, or other aspects of the permit, are not being complied with, and staff can take appropriate action to further investigate. We believe that this provision should be removed.

D4: Part 2.5 states that so long as the Permittee is complying with the procedures in Part 2.3, "is in compliance with the MALs" and is implementing the permit, the Permittee does not need to repeat the procedure for continuing or recurring exceedances of the same water quality standard unless directed by the Board to develop and implement additional BMPs. As noted above, we object to the inclusion of MALs as an enforcement tool on numerous grounds. The separate requirement of MALs compliance should be removed from Part 2.5.

E. Comments Relating to the Storm Water Quality Management Program Implementation

E1: Part 3.A.2 states that each Permittee shall take steps "to reduce the discharges of pollutants in storm water to the MEP and achieve water quality objectives." This requirement appears to exempt the achievement of water quality objectives from the MEP standard. This violates the Clean Water Act's MEP requirements and also reflects a provision that is not required by federal law, contrary to Finding F7 discussed above. The current Permit does not contain this language, and it should be removed.

E2: Part 3.A.3.1 requires Permittees to achieve dry-weather TMDL WLAs through "effective prohibition of dry weather discharges." This requirement is not realistic because many sources of dry-weather discharge are outside of the Permittees' control (i.e., POTW discharges that are Regional Board-permitted). This requirement also ignores MEP analysis. Moreover, specifying the minimization of dry weather discharges as the control technique may violate Water Code § 13360(a), which prohibits the Regional Board from specifying the "particular manner" of compliance with a WDR or order of the Board. Compliance with the dry weather WLAs may, for example, be achieved through treatment BMPs as well as through the reduction or prohibition of dry weather discharges. The dry weather discharge prohibition should be removed.

E3: Part 3.A.3.2, relating to wet weather discharges, should reference the MEP standard and be implemented in accordance to the TMDL implementation plans approved by the Regional Board.

E4: Part 3.B.2(f) requires the use of control measures to prevent or reduce the discharge of pollutants "to achieve water quality objectives." This states an incorrect standard, which is to prevent or reduce the discharge of pollutants to the MEP. The provision should be changed to reflect the correct legal standard.

E5: Part 3.D.1 requires each Permittee to modify storm water management programs, protocols, practices and municipal codes to make them consistent with the permit. This period of time is too short, for the reasons noted above. The provision is also inconsistent with Parts 3.B.3 and 3.B.4, which provide 180 days.

E6: Footnote 3 on page 33 of the Draft Permit sets forth sources of funding for implementation of the Permit. These funding sources should not be limited to local sources, but should also include state or federal funding sources.

F. Comments Relating to the Special Provisions (Baseline) General Requirements

F1: Part 4.A.1 states that the Permit is intended to achieve a storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP "and achieve water quality objectives for the permitted areas in the County of Ventura." As discussed above in comments E1 and E4, the requirement to achieve water quality objectives should be deleted. Moreover, the provision does not reference the MEP standard, which is applicable to all efforts undertaken by Permittees under the Permit.

G. Comments Relating to the Public Information and Participation Program

G1: Regarding Part 4.C.1.(c).(1) (A), Public Works refers to our program messages as public service announcements whether they are broadcast as paid or unpaid spots as part of our advertising campaign. This language doesn't include mention of conducting media relations efforts to garner pro bono coverage of stormwater issues by local media outlets.

G2: Regarding Part 4.C.1.(c).(1).(E), the description about organizing watershed Citizen Advisory Group/Committees is vague. It isn't clear which jurisdiction will be responsible for funding, implementing, and monitoring the "effective methods" and for how long. I recommend revising the text to read, "to gain their input on methods to educate the public..." instead of "to develop effective methods..." Funding for implementation of the "methods" and evaluation of this program should be addressed.

G3: Regarding Part 4.C.1.(c).(1).(F), the description is vague. The County of Los Angeles participates in numerous community events as well as events sponsored by the County Board of Supervisors. This task will require a large budget for a jurisdiction. While events allow us to interact with the public, which is extremely valuable, we usually can't interact with more than 200 people at an event and have a meaningful conversation to facilitate their understanding of the stormwater pollution problem. Receiving a pollution prevention message on numerous occasions through a media outlet is the recommended method to promote behavior change. It is recommended that the jurisdictions continue to participate in community events to reach their target audience with pollution prevention messages and information about programs offered by their jurisdiction to facilitate proper disposal of trash, recyclables and hazardous materials.

- G4: Regarding Part 4.C.2.(b), recommend changing the word "shall" to "may" in the paragraph where it appears on the first and fourth line to clarify that offering the program is optional instead of mandatory. The County of Los Angeles evaluated offering this program during the previous Permit cycle (2001 – 2006). We determined we didn't have enough manpower to implement this program because expertise would be required on numerous BMPs which is beyond our manpower and budget capabilities. This task would require developing a tracking method to identify the status of small businesses (open or closed) that would require numerous manpower hours. An option would be to include providing general housekeeping BMPs to small businesses who register for permits. Again, the cost to implement this program is unknown.

H. Comments Relating to the Industrial/Commercial Facilities Program

- H1: The provision in Part 4.D.2.a suggesting additional treatment control BMPs at a commercial site if MALs are not met is not feasible because there is no way to establish a linkage between receiving water quality (where MAL-compliance is measured) and a particular BMP in the watershed. If, however, this requirement is intended as a suggestion, it is not objectionable.

- H2: Inspection Frequency (Page 47)

The language relating to inspection frequency is vague and difficult to plan for since the Regional Board does not provide Permittees a schedule of inspections that are to be performed in their jurisdiction, nor is the Regional Board required to notify the Permittees of any inspection it is performing.

To improve cooperation and provide better coordination between the Regional Board and Permittees, the Regional Board should be required to: 1) identify the frequency of their inspections performed under the IASGP, 2) provide notification to the Permittee agency of any inspections performed under the IASGP, 3) update its database of IASGP facility inspections on a more timely basis, and 4) add a jurisdiction code to its IASGP facility database which will identify the physical address jurisdiction (of each Permittee).

- H3: Addition of Nurseries as a Critical Source (Page 46)

It is not clear whether this is a resource or cost issue, but based on our experience, it is easier to add new facilities and utilize a new facility coding scheme for them than to update the existing list of facilities.

- H4: Support of Regional Water Board Enforcement Actions (Page 49)

With respect to Part 4.D.3.d.4, language should be added which requires that the Regional Board consider existing local government enforcement with respect to

civil and criminal cases. The Regional Board should not expose or damage existing cases which the local agency has already begun enforcement on, and should consult with the local government to determine if an existing case is pending or ongoing and an offer to join the case should be made in order to not compromise the case. These issues should be discussed during the Stormwater Task Force meetings. In addition, requiring Permittee staff to join Regional Board investigations or to serve as witnesses in enforcement proceedings exceeds the Regional Board's authority under either the CWA or the Porter-Cologne Act. The Regional Board staff has no authority to require Permittee staff to cooperate in investigations or to serve as witnesses, unless subpoenaed. While the term "available" suggests that the provision of staff is subject to the convenience of Permittees, the provision should, at minimum, provide for reimbursement of Permittee staff serving at the request of the Regional Board. With respect to the appearance of Permittee witnesses, the Regional Board can use its subpoena power. Thus, this provision should be deleted from the Draft Permit.

I. Comments Relating to the Planning and Land Development Program

- I1: The first paragraph of this section appears to be a preamble; this may create an ambiguity with the specific requirements of the Permit, which are set forth later in Part 4.E. All enforceable provisions of the Permit should be located in specific sections, not set forth in the preamble, which may set forth general goals to be achieved by the specific provisions.
- I2: The 5% effective impervious value noted in Part 4.E.1(b) is excessive and more related to preliminary findings from the Peak Flow study. The current Los Angeles County MS4 permit recognizes the Center for Watershed Protection's study citing 10% imperviousness in a watershed as the threshold of degradation. In light of this fact, the effective impervious value should be changed to 10% or more. Also, the footnote to this paragraph should state that any properly designed vegetated buffer should be allowed, not just a vegetated swale. Specifying only a vegetated swale appears to violate Water Code §13360(a). If the 5% value is to remain, it should only apply to development in area that drains directly to a natural stream.
- I3: Part 4.E.1(d) introduces the terms Source Control, Low Impact Development (LID) Strategies, and Treatment Control. While the terms "Source Control" and "Treatment Control" are in the CASQA manuals, Permittees may be using other suitable controls and should be allowed to use them if the controls can be shown to be equivalent. LID is a newly introduced concept and could be burdensome to many agencies. The Permit should allow phasing in of LID compliance according to development type. There should also be incentives offered to permittees for adopting LID strategies, such as opting out of a special study, reduced

monitoring, or permission to adopt the standard storm to be derived by the Wet Weather Task Force.

- 14: Part 4.E.1(f) introduces an "order of preference" for mitigation beginning with LID strategies and ending with proprietary treatment control BMPs. Until now, the emphasis in the private and public development community has been on end-of-pipe proprietary BMPs. Permittees should be allowed to set their own mitigation priority, but be provided incentives to adopt the Board's preferred order, such as opting out of a special study, reduced monitoring, or permission to adopt the standard storm to be derived by the Wet Weather Task Force.
- 15: With regard to Part 4.E.I, covering the Low Impact Development (LID) requirements:
- o LID criteria represent a significant change in permittees' operating procedures and will require zoning code rewriting, building and safety code revamping, and other administrative steps. Significant incentives should be offered to Permittees to adopt LID criteria, such as opting out of a special study, reduced monitoring, or permission to adopt the standard storm to be derived by the Wet Weather Task Force.
 - o The term "LID" needs a more precise definition and needs to be placed in the glossary.
 - o The interrelationship between LID and post-construction BMP requirements is not clear in the Draft Permit. There appears to be conflicts and overlaps between these requirements. For example, while paragraph 1 requires LID compliance on all new development and redevelopment, Part 4.E.II.1(b) only requires post-construction BMPs to be installed on developments of one acre or greater. This apparent discrepancy should be resolved.
 - o Based on the broad language in Part 4.E.I.1, it appears that single unit single-family residences on level terrain may also require LID. This represents an expansion of the current requirements. Single unit level-terrain SFR compliance should be encouraged, not required, with incentives offered to the Permittees.
- Part 4.E.I.2 requires preparation of an LID Technical Guidance Document to include a number of objectives and specs. The document can only be achieved through a likely revamping of zoning, land use, and building codes. The permit requires 8 areas of general compliance. However, there are no criteria as to what would be acceptable to Regional Board staff. Moreover, either the Permit should explicitly not require the LID Technical Guidance Document to be submitted to the Executive Officer or, if so, should provide a deadline for the Executive Officer to approve the Document, and, if no such approval has been given by the deadline, the Permit should provide that the Document is to be deemed approved. The Permit should state that development of the Guidance Document will not occur until after peer review and publication of the SMC LID study.

Finally, the Permit should state that no implementation of LID methods is to occur until after publication and approval of the LID Technical Guidance Manual.

- 16: With regard to Part 4.E. II, covering hydromodification (peak flow) mitigation criteria:
- Paragraph 1(a) should be worded to make it clear that the requirements apply only to projects draining to natural streams. It should also state if compliance is required if the project is upstream of (not adjacent to) a natural channel but connected by a lined conveyance. The paragraph omits references to controls on runoff volume, although "volume" is used in the paragraph title—either volume control should be included or the title changed.
 - Paragraph 1(c), Erosion Potential: It may be overly burdensome to characterize the erosion potential for a given natural stream if that stream is not located at the project site. Developers should be allowed to use criteria other than erosion potential and should be allowed to adopt management strategies approved by other Regional Boards.
 - Documentation needs to be presented for the choice of the "2-year 24 hour storm" mentioned in Paragraph 1(e) and a definition of that storm event needs to be included in the glossary.
 - Paragraph 1(f) requires Permittees to participate in the SMC hydromod phase II study, and to conduct its own study if the SMC study does not occur. The Regional Board lacks authority to require such participation, as this is a violation of Water Code § 13360(a). Instead, the Permit should provide Permittees with the option of participation, conducting their own study or adopting a hydromodification plan already adopted by another Regional Board.
- 17: With regard to Part 4.E.III, covering post-construction mitigation criteria:
- Paragraph 1(a) is vague and ambiguous in several respects. First, the interrelationship between these requirements and the LID requirements contained in Part 4.E.I.1 is not clear. Staff needs to make clear exactly how these elements are to interrelate and as to which development projects. Second, the paragraph is confusing in that it applies "during the construction" of hillside single-family homes. This phrase should be more clearly defined. Third, the definition of "Hillside home" applies to those on 20% slopes. It should be made clear if this slope applies to any part of the parcel or only the location of the house.
 - The interrelationship between the requirements of Paragraph 1(b), which apply only to certain developments, and the "all development" requirements of Part 4.E.I.1 is vague and ambiguous.
 - Paragraph 1(c): The interrelationship between the Paragraph 1(c) requirements and the requirements in Part 4.E.I.1 is vague and ambiguous. Also, this paragraph should make clear that the requirements

- for conditioning and approval shall apply only to projects with the jurisdiction of the Permittee. Freeway and highway post-construction BMPs are within the authority of Caltrans, for example.
- Paragraph 2 introduces tiered criteria for designing BMPs
 - There should be provision for adoption of the standard storm to be derived by the Wet Weather Task Force.
 - A footnote removes "construction projects that disturb land area 5 acres or greater" from the ¾ inch volumetric option for BMP design. There is no apparent reasoning for this removal. Also, the term "construction" in the footnote needs to be better defined to eliminate possible confusion with GCASP projects and/or priority projects.
 - The second tier applies to areas \geq 50 acres and calls for WQ and flow simulations using SWMM or similar. The Regional Board needs to recognize that this requirement could be a burden on private and public developers.
 - Paragraph 4(c) appears to require post-construction BMPs to be installed on on routine infrastructure maintenance, such as road surface repaving. This requirement could cause major hardship to Permittees, both with respect to the cost of repaving projects and delays and traffic disruption attendant to installing post-construction BMPs as well. Requiring post-construction BMPs in the repaving of Permittee-owned surfaces should be made optional with an incentive offered, such as opting out of a special study, reduced monitoring, or permission to adopt the standard storm to be derived by the Wet Weather Task Force.
 - Paragraph 5(a)(E) presents enforceability problems. Permittees may not have authority to specify the terms of sale or lease agreements. Moreover, the success of tenant-maintained BMPs is questionable without enforcement or inspection.
 - Paragraph 6 requires that Permittees inspect project sites and approve post-construction BMPs before issuing certificate of occupancy. This requirement is not included within the CWA regulations governing MS4 permits and, as noted above, requires the economic analysis mandated by the Supreme Court in the *City of Burbank* case and also represents an unfunded state mandate. Moreover, the provisions of Paragraph 6(b) have no place in the Draft Permit, as they relate exclusively to enforcement actions that could be taken by the state or U.S. EPA, and not the Permittees. Also, the subparagraph is vague and ambiguous with respect to what is considered to be "inadequate" or "ineffective" BMPs.
 - Paragraph 9(a) calls for a GIS to track post-construction BMPs. Smaller Permittees will find this burdensome. It should be made clear whether the Permittee must submit the GIS for approval by the Executive Officer. If such approval is not provided after a period of time, the permit should provide that the submission is deemed approved.

- Paragraph 9(a)(2) requires inspection of BMPs. As noted, such non-CWA regulation mandated inspections require an economic assessment and is an unfunded state mandate. In addition, the provision requires inspection of BMPs previously approved, without specifying how far back the BMPs were approved. This is onerous and could be a major hardship for many Permittees. An incentive to Permittees should be offered, such as opting out of a special study, reduced monitoring, or permission to adopt the standard storm to be derived by the Wet Weather Task Force.
- Paragraph 10 requires a technical guidance manual. It should be made clear whether or not the Executive Officer must approve the submittal, and, if so, the Permit should provide that after a certain time period following submittal, the failure to act by the Executive Officer constitutes approval of the manual.
- Paragraph 11 requires a process to approve BMPs and to coordinate between agencies. It should be made clear whether or not the Executive Officer must approve the submittal, and, if so, the Permit should provide that after a certain time period following submittal, the failure to act by the Executive Officer constitutes approval of the manual.

J. Comments Relating to the Development Construction Program

- J1: The first paragraph is a preamble stating general principles and it is presumed that there are no enforcement consequences attached to it. If this understanding is incorrect, staff should provide a clarification.
- J2: Paragraph 1 introduces Grading Prohibitions that can cause considerable hardship for permittees and developers. The Executive Officer may grant a variance based on certain required evidence. The Permit should provide a time period within which the Executive Officer must act after full submittal of the variance information and, if the Executive Officer has not acted within that time, the variance should be deemed approved. Also, since variances benefit developers, not the Permittees; the Permit should provide that the developer should be the party required to make the demonstration called for in this paragraph.
- J3: Paragraph 2 requires minimum BMPs for sites < 1 acre and provides a table of BMPs from the CASQA and Caltrans handbooks. This requirement could be a problem if Permittees are not currently using these handbooks. Permittees may be using other suitable controls and should be allowed to use them if the controls can be shown to be equivalent to the BMPs contained in the CASQA and Caltrans handbooks. Also, specifying particular BMPs to be used may violate Water Code § 13360(a). The paragraph also requires the calculation of an Erosivity Factor and use of specific BMPs if the factor is ≥ 50 . The Erosivity Factor is not defined, not in the glossary, and it is unknown if it is reasonable and easy to use.

- J4: Paragraph 3 covers projects ≥ 1 acre and < 5 acres and provides a table of acceptable BMPs, also out of the CASQA and Caltrans handbooks. As noted above, this requirement could be a problem if permittees do not currently use the handbooks. Permittees should be allowed to use other suitable BMPs if the controls can be shown to be equivalent. Also, specifying certain BMPs may violate Water Code § 13360(a).
- J5: Paragraph 4 covers projects ≥ 5 acres and provides a table of acceptable BMPs also out of the CASQA and Caltrans handbooks. As noted above, this requirement could be a problem if permittees do not currently use the handbooks. Permittees should be allowed to use other suitable BMPs if the controls can be shown to be equivalent. Also, specifying certain BMPs may violate Water Code § 13360(a).
- J6: Paragraph 5 requires a local SWPPP for construction ≥ 1 acre, however there appears to be a conflict in referring to paragraph 2, which covers < 1 acre. This conflict should be resolved.
- J7: Paragraph 6's specification of 12 housekeeping BMPs for road repairs appears to violate Water Code § 13360. Permittees may be using other suitable controls and should be allowed to use them if the controls can be shown to be equivalent. In addition, there should be provisions for exemptions from some or all of the BMPs during emergencies, such as flooding or earthquake repairs.
- J8: Paragraph 7's requirement for an electronic site tracking system for grading, encroachment, demolition, building, or construction permits should be subject to a reasonable time frame for Permittees who do not already have such a system to implement one.
- J9: Paragraph 8's inspection requirements go beyond the inspection requirements of the CWA regulations and, therefore, are subject to the review mandated by *City of Burbank*. In addition, the requirement in Paragraph 8(a)(3) that enforcement action must be undertaken purports to eliminate the prosecutorial discretion of city attorneys, county counsel or district attorneys to enforce municipal codes. The Permit could lawfully require Permittees to request such agencies to bring enforcement actions.
- Paragraph 8(b) is mostly redundant of paragraph E.III.6(a)(1) of the Development Planning program, except the additional qualifying sentence at the end appears to miss-cite the earlier paragraph E.III.7(a)(1) which does not appear to relate to BMP verification. This discrepancy should be cleared up.
- J10: The requirements of Paragraph 10(c) for Permittees to conduct inspections of facilities where complaints were received by Regional Board staff go beyond the

requirements of the CWA and require the review mandated by *City of Burbank*. Moreover, the requirement should in any event be limited to complaints of violation of local ordinances, and not general stormwater non-compliance and should be subject to a minimum importance threshold, such as multiple complaints.

- J11: Paragraph 10(d)'s requirement of Permittee support of Regional Board enforcement actions through providing staff for joint inspections and appearing as witnesses at hearings goes beyond the Regional Board's authority under either the CWA or the Porter-Cologne Act. The Regional Board staff has no authority to require Permittee staff to cooperate in investigations or to serve as witnesses, unless subpoenaed. While the term "available" suggests that the provision of staff is subject to the convenience of Permittees, the provision should provide for reimbursement of Permittee staff serving at the request of the Regional Board. With respect to the appearance of Permittee witnesses, the Regional Board can use its subpoena power, and thus the provision should be deleted from the Draft Permit.

K. Comments Relating to the Public Agency Activities Program

- K1: Regarding Part 4.G.1, Septic Sewer Overflows Notifications, when a spill overflows to the MS4, the responsible sanitary agency should be required to notify not only the affected public health agencies, but also the affected MS4 owner/operator, within 2 hours.
- K2: Regarding Part 4.G.2, Public Construction Activities Management, while we understand and applaud the goal of improving consistency in inspections conducted by State and municipal inspectors, we are concerned about using the Caltrans staff guide as "rule" at this time. Such a specification of BMPs also appears to violate Water Code § 13360(a). The Permit should provide flexibility for Permittees to use equivalent BMPs to those specified.
- K3: Regarding Part 4.G.3, Maintenance Activities, requiring Permittees to obtain coverage under the Construction Activities Storm Water General Permit (CASGP) for long-term maintenance activities such as channel clearing and sidewalk or street replacements is inappropriate. These activities do not constitute "construction." The coverage of activities under the CASGP is a separate legal issue which cannot be modified by terms of the MS4 Permit.
- K4: Regarding Part 4.G.6, the requirement for catch basin cleanouts on a particular schedule appears to violate Water Code § 13360(a), by specifying a means of compliance. The schedule should be deleted. Also, the blanket installation of excluders on all catch basins called for in paragraph (e) would not be a responsible expenditure of public funds, because for many catch basins located in low trash generation areas, excluders simply would be unnecessary.

Implementation of BMPs must be strategic and targeted to extract the most return on the capital investment. We recommend that this requirement be deleted.

- K5: Regarding Part 4.G.7, Streets and Roads, paragraph (b) sets forth required BMPs for road reconstruction. The specification of these BMPs appears to violate Water Code § 13360(a). Permittees should be given flexibility to adopt BMPs that achieve equal or superior performance to the BMPs specified in this section.
- K6: Regarding Part 4.G.10, Municipal Potable Water Supply Discharges, municipal potable water supply system discharges should remain conditionally exempt from coverage under the Permit. Potable water discharges do not pose a water quality threat, and limiting discharge to 100,000 gallons for the system per year would be prohibitive.
- K7: Regarding Part 4.G.11, Emergency Procedures, 14 instead of 7 business days should be allotted to submit a statement of the occurrence to ensure quality reporting.

L. Comments Relating to the Illicit Connections and Illicit Discharge Elimination Program

- L1: Regarding Part 4.H.2, IC/ID Complaints Website, hosting an Internet site to receive IC/ID complaints is extraneous and would be an irresponsible expenditure of public funds. A telephone hotline such as Los Angeles County's 888-CLEANLA is the best way to field complaints.
- L2: Regarding Part 4.H.3, Illicit Discharge Investigation Protocol, the reference to the Center for Watershed Protection guidance manual belongs in Part 4.H.4.a, as it deals with illicit discharge investigation instead of field screening of the storm drain system. Adherence to the guidance manual should be voluntary instead of mandatory, as mandatory adherence violates Water Code § 13360(a).

M. Comments Relating to the Glossary

- M1: "Authorization to discharge storm water from storm water treatment BMPs" – This definition contains prescriptive language, which should be in the enforceable sections of the Permit. We recommend deletion of this definition.
- M2: "Automotive Repair Shop" – This definition is subsumed by "Automotive Service Facilities" and should be deleted.

- M3: "Commercial Area(s) and "Commercial Development" – These two definitions appear to cover similar areas, but are somewhat different in scope. To avoid confusion, one definition should be included and the other deleted.
- M4: "Construction" – This definition is overbroad and includes routine maintenance not involving new construction. We recommend retention of the definition of "construction" in the current Ventura County MS4 permit.
- M5: "Development" – This definition should include the specific exemptions contained in the current Ventura County MS4 permit.
- M6: "Inspection" – This definition includes prescriptive requirements (the steps involved in performing an inspection), which are more properly contained in the enforceable sections of the Permit.
- M7: "Potable Water Distribution Systems Releases" – This definition contains prescriptive requirements relating to the nature of releases, all of which are contained in the Permit and should not be repeated in the glossary. It should be noted that we object to the restrictions included in the definition relating to such releases.

N. Comments Relating to the Standard Provisions

- N1: Part 8.C, relating to public review of documents, should make clear that it is the Regional Board that will make the submitted documents available to the public, not the Permittee. The response to public comments, should it be necessary, should also be the responsibility of the Regional Board.

O. Comments Relating to the Monitoring Program (Attachment F)

- O1: TSS Monitoring and Correlation

The requirement for TSS monitoring and correlation (F-2, 9.) should be removed. Analysis of Los Angeles' County Flood Control District (LACFCD) NPDES data has shown that there is poor correlation between pollutants of concern and total suspended solids. This was detailed in the LACFCD's 1994-2005 Integrated Receiving Water Impacts Report and in the 2006 Report on Waste Discharges.

- O2: Flow-Weighted Composite Sampling

The language defining the duration of flow-weighted composites currently calls for sampling only the first 3 hours of storm (Page F-2, 6.). The first sentence should be revised such that it refers to manually collected samples. We recommend restating the first sentence as follows: "Manually collected samples shall be flow-weighted composites, collected during the first 3 hours or for the

duration of the storm if it is less than 3 hours." The following sentence should be added at the end of statement #6: "Sampling at automated sampling locations should occur for the full duration of a storm to properly determine event mean concentration."

O3: Dry-Weather Sampling Periods

The language regarding the scheduling of dry weather sampling (F-2, 8. (b)) should be revised such that sampling after the wet season should occur during May or June, and sampling prior to the wet season should be conducted in August or September. The following change is recommended: 8. (b) (A) Monitor 1 prior to the onset of wet weather – October 1st (during the months of August - September). 8. (b) (B) Monitor 1 post wet weather – April 15th (during the months of May – June).

O4: Constituents to be Grab Sampled

On page F-3, 10., the draft Permit specifies grab samples for pathogen indicators and oil and grease only. This will preclude grab samples for volatile substances such as MTBE, and substances subject to biological activity such as phenols and dissolved oxygen. Composite samples are not appropriate for these constituents as they tend to transform to different substances or change in concentration after a short time span. These changes may very likely occur in the presence of other reactive pollutants. We recommend that the following statement be used for F-3, 10.: "Grab samples shall be taken for pathogen indicators, oil and grease, volatile substances such as Methyl Tertiary Butyl Ether, and analytes subject to biological activity such as phenols and dissolved oxygen. Other substances that should be monitored by grab sample include, pH, temperature, and cyanide, as required in 40 CFR 122.21(g)(7)."

O5: Electronic Submission of Monitoring Results

Monitoring results are required to be submitted electronically 45 days after a sampling event (page F-3, 15.). This requirement applies to toxicity tests (F-7, 8.), and tributary monitoring (F-8, 3.(g)) as well. Forty-five days may not provide enough time for complete laboratory analysis, especially for toxicity tests that result in one or more TIEs. An exemption should be granted for toxicity tests that result in TIEs, and reporting of electronic test results should occur within 90 days after a sampling event.

O6: Pyrethroid Insecticides Study

The proposed Pyrethroid study requires the collection of 3 L of sediment at each sampling location (F-20, 2. (e)). Concrete-bottom channels are designed to scour themselves clean, which will present great technical difficulties in obtaining

sediments. An EPA approved sampling protocol for sediment in concrete lined channels should be provided by the RWQCB before including this requirement in a permit.

O7: Aquatic Toxicity Monitoring

The draft permit specifies that toxicity samples should be flow-weighted (F-6, 4(g)). This will be quite onerous and burdensome to achieve at many sites, requiring large expenditures for automated equipment and/or many hours of labor in a risky situation during a storm event. We recommend that the requirement be changed to allow for 3 grab samples taken at representative times during a storm runoff event, during the rising limb of the runoff hydrograph, at or near the peak flow rate of the hydrograph, and during the descending limb of the hydrograph.

(F-5, 2.) The Permit should state specifically how it measures toxicity for each test, for each species.

Regarding the reference to acute Phase I Toxicity Identification Evaluations (TIE) (F-5, 2.), we recommend maintaining data continuity by continuing to use the long used EPA chronic toxicity tests on the sea urchin and water flea - *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms*, EPA/600/R-95-136, August, 1995. Please delete any references to acute toxicity tests.

The Regional Board should state specifically how the Year 1 and Year 2 toxicity thresholds are to be applied.

(F-5, 4.(a)) Toxicity Reduction Evaluations (TRE) based upon drastically different Year 1 and Year 2 (stricter) TIE toxicity thresholds may be onerous and burdensome. The Regional Board should state specifically how those thresholds are to be applied.

(F-5, 4.(a)) Development of a TRE Corrective Action Plan at the mass emissions and/or tributary monitoring program level is onerous and burdensome. It should be reserved for smaller, more source-trackable and BMP-developable watershed areas. This requirement should be removed.

O8: Bioassessment

The five objectives listed on Page F-14 may not be achievable even with all the subsequent requirements being met. We recommend these objectives be deleted.

The Bioassessment Monitoring requirement is tied to the requirements for Watershed Ecological Restoration Plans (Page F16, 16.). It is important to explicitly define the reaches of the MS4 system that are considered to be

streams such that engineered portions of the MS4 system are not identified as needing a restoration plan based upon low Index of Biotic Integrity scores.

Currently available SoCal IBI is still under further development by California Department of Fish and Game (DFG), SWAMP, and other groups/agencies. This is because the existing SoCal IBI cannot be used to evaluate non-perennial streams, low gradient streams (or lower reaches of streams where deposition rather than erosion is dominant), and engineered streams. Until the SoCal IBI is completed, it cannot be used to determine whether a stream is impaired and thus needs an ecological restoration. Instead, we recommend continuing the existing bioassessment at streams of all types based on latest available SoCal IBI mainly for regional evaluation. The data can be made available directly to California DFG and SWAMP to help their ongoing study to remedy the deficiencies of the existing SoCal IBI.

The bioassessment can only provide an evaluation of the biological condition of a water body by measurements of resident biota. It does not produce results that allows direct link between apparent poor ratings and types of pollutants and sources. Therefore, the bioassessment results cannot be used to determine the necessity of ecological restoration and it can only be used for evaluation of biological condition of streams after appropriate standards (IBIs) have been fully developed.

O9: Trash and Debris Study.

Assessment of trash and debris by the permittees should be limited to the ones transported by the stormwater discharges, since the MS4 Permit is applicable only to such discharges. Therefore, the assessment should be only at the stormwater outlets in the beach. The remaining areas of the beach, where trash and debris are from non-point sources, must be excluded from the study or performed by other parties.

Developing control strategies for trash-impaired areas have been achieved by TMDL process under an appropriate legal framework after the impairment had been identified. Trash and debris study under the MS4 permit should be limited to identifying the impairment.

The bulleted objectives on Page F-17 may not be achievable, even if all other aspects of the Study are undertaken. Thus, they should be deleted.

To do a trash study correctly, there should be an effort to include sorting of man-made trash by size. There should also be correlation to storm size, duration, and peak intensity.

O10: Hydromodification Control Study.

The Regional Board should allow adoption of hydromodification control methods already approved by other regional boards, and this study should not be required.

O11: Southern California Bight Project.

The last sentence of the first paragraph should be rewritten to say:

"Studies sponsored by the participation of the Principal Permittee and Permittees are to assess the special extent and magnitude of ecological disturbances due to stormwater runoff from the mainland shelf of the SCB, to describe relative conditions among different regions of the SCBP due to stormwater runoff, and to suggest possible management practices to help reduce disturbances caused by stormwater runoff."

O12: Volunteer Monitoring Programs

To minimize risk to the volunteers, and legal liability to the Permittees, add to the first paragraph:

"Any volunteer monitoring programs will take place in dry weather and in such a way as to eliminate risk to the volunteers. Any volunteers participating in the program will be required to sign written agreements holding the Permittees harmless in the event of death or injury or loss of property."

If the release language is not added to this section, the volunteer monitoring program should be deleted from the Permit.

P. Comments Relating to the Reporting Program (Attachment H)

P1: We support the change in the Annual Report submittal date to December 15.

P2: The questions in the Reporting Program are sometimes inconsistent with the requirements in the main body of the draft permit. For example, see Parking Facilities Management (Page H-31 of 34).