



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

May 29, 2008

via U.S. Mail and email
(3rddraftVCMS4@waterboards.ca.gov)

Dr. Xavier Swamikannu
Manager, Stormwater Permitting
Los Angeles Regional Water Quality Control Board
320 West 4th Street
Los Angeles, CA 90013-2343

re: Ventura County MS4 Permit

Dear Dr. Swamikannu:

These comments pertain primarily to the provisions in Part 6 of the April 29, 2008 tentative draft permit for the Ventura County Municipal Separate Storm Sewer System (MS4) for incorporating Waste Load Allocations (WLAs) established in Total Maximum Daily Loads (TMDLs).

EPA supports the approach used for incorporating TMDL WLAs in the August 28, 2007 second draft of this permit, in which the WLAs were incorporated as numeric water quality-based effluent limits (WQBELs). The second draft permit required compliance with these WQBELs to be determined by monitoring end-of-pipe discharges. Under this approach, clear compliance determinations may be made, and the effectiveness of stormwater controls on water quality may be assessed. As a general matter, MS4 permits, many of which represent the fourth generation of permits to control municipal stormwater, should enable permitting authorities to more effectively determine compliance and evaluate impacts on water quality.

The April 29, 2008 tentative draft permit incorporates WLAs as in-stream water quality concentrations, rather than end-of-pipe monitoring. We understand that this revised approach is being taken to mirror language in TMDL implementation plans. For example, the Calleguas Creek TMDL implementation plan states that "stormwater WLAs will be incorporated into the NPDES permit as receiving water limits." While we are supportive of this change to the permit, we believe it needs to be accompanied by clear language on how compliance determinations will be made. We have outlined three options below for making these compliance determinations. Although all three would be acceptable, we have listed them in order of our preference in terms of making clear compliance determinations linked to water quality improvements.

Option 1: exceedances of receiving water limits would represent non-compliance with the permit, as the Calleguas Creek TMDL language suggests. As currently drafted, the tentative draft permit is not clear that compliance conclusions will be based solely on a comparison of receiving water data to receiving water limits based on WLAs. Based on our discussions with Regional Board staff, there is some uncertainty as to what role the BMP implementation referred to in the tentative draft permit (e.g. in Part 6, section V.1.b.2 in the case of the Santa Clara River nitrogen WLAs) would have on compliance determinations. We recommend the permit add explicit statements to the compliance monitoring text in Part 6 to make clear that receiving water limit exceedances represent non-compliance.

Option 2: exceedances of receiving water limits would result in compliance determinations based on representative end-of-pipe monitoring. This would require that the permit include numeric WQBELs consistent with the WLAs. When the receiving water limits are exceeded, the permittees would evaluate end-of-pipe monitoring results, and compliance would be determined by comparing these results to the numeric WQBELs. We understand the end-of-pipe monitoring will occur concurrently with the in-stream monitoring. The concurrent timing of the monitoring is essential as part of this option. (see discussion below regarding the adequacy of end-of-pipe monitoring)

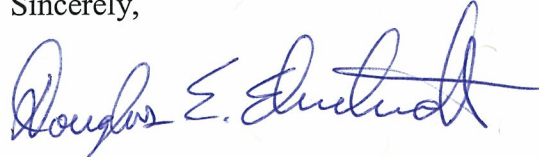
Option 3: establish WQBELs as non-numeric limits expressed as specific Best Management Practices (BMPs). As noted in EPA's November 22, 2002 memo entitled, "Establishing TMDL WLAs for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs," "when a non-numeric WQBEL is imposed, the permit's administrative record, including the fact sheet when one is required, need to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL." If it is not feasible to document, in a timely manner, that a specific suite of BMPs would be sufficient to implement the WLA, we expect numeric WQBELs to be incorporated into the permit. Similarly for non-stormwater discharges, during dry weather periods, it would not be appropriate to use a non-numeric BMP approach for the establishment of WQBELs. For these discharges, numeric WQBELs should be established.

In a related matter, we are concerned whether the end-of-pipe monitoring to be performed under the draft tentative permit will be adequate to determine if WLAs are being achieved. We suggest that the permit include more details on which discharges from the MS4 will be considered "Major Outfalls," and therefore be monitored under this permit. We understand from our consultation with Regional Board staff that it is possible that end-of-pipe monitoring may be limited to as few as one "Major Outfall" per municipality. While this may be appropriate for some of the smaller municipalities in Ventura County, such minimal monitoring may not be appropriate for a compliance monitoring strategy which substitutes end-of-pipe monitoring for the receiving water limits specified in TMDLs. The permit's requirements for monitoring of major outfalls should ensure that there is representative monitoring to enable the Regional Board to make determinations of whether discharges are causing exceedances of receiving water limits. In order for

major outfalls to provide information that is representative of stormwater discharges from this MS4, it appears likely that the number of major outfalls to be monitored should be increased.

Should you have any questions regarding this matter, please call me at (415) 972-3420, or Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in blue ink, reading "Douglas E. Eberhardt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas E. Eberhardt, Chief
NPDES Permits Office