

triggered at a monitoring location whenever analysis of a Monday sample indicates that an exceedance has occurred. Weekly sampling resumes for that location once the accelerated sample results demonstrate that bacteria levels no longer exceed the limits. The Monday data set, along with any required accelerated sampling, would be utilized in determining compliance with the TMDL as referenced in Finding E. 32 and in footnote 5 of the Receiving Waters Limitation Provision of the LA MS4 Permit at the time the permit was reopened on September 14, 2006. However, when the MS4 Permit was reopened to incorporate the Marina del Rey Bacteria TMDL on August 9, 2007, the same finding and footnote were further revised to provide that monitoring data collected through the Monitoring and Reporting Program CI 6948 of the LA MS4 Permit would also be used to assess compliance with the Receiving Waters Limitations. Under CI 6948, additional monitoring on four other days of the week (Tues-Thurs) has been conducted at various monitoring sites throughout the jurisdictional groups. This additional monitoring data should not be used for determining compliance with Santa Monica Bay Beaches Bacteria TMDL/Receiving Waters Limitations provision of the MS4 Permit on dates before the MS4 Permit was amended on August 9, 2007. Accordingly, the NOV and Order was not supported by substantial evidence.

G. THE ORDER AND NOV SHOULD BE POSTPONED PENDING THE RESULTS OF THE TMDL REOPENER

The Order and NOV is untimely considering the TMDL is outdated and overdue for a reopener. According to Regional Board Resolution No. 2002-022, the TMDL relies on monitoring sites and reference points which may potentially skew the data and reduce the overall effectiveness of the TMDL. In Paragraph 22 of Resolution No. 2002-22, it stated:

For the Wet-Weather and Dry-Weather Bacteria TMDLs at Santa Monica Bay beaches, Leo Carrillo Beach and its associated drainage area, Arroyo Sequit Canyon, were selected as the local reference system until other reference sites or approaches are evaluated and the necessary data collected to support the use of alternative reference sites or approaches when the TMDL is revised four years after the effective date. . . . It is the intent of the Regional Board to re-evaluate the use of Leo Carrillo Beach due to potential problems arising from the heavy recreational use of the beach and the close proximity of two campgrounds.

As to the monitoring sites in the Northern part of the Bay, the Regional Board stated:

Northern Bay beach monitoring sites are fewer in number and provide less comprehensive data than the extensive shoreline monitoring network elsewhere in Santa Monica Bay. (Regional Board Resolution No. 2002-022, ¶ 23, p. 4.)

Thus, even while adopting the TMDL, the Regional Board acknowledged that potential flaws existed with respect to the significance of the data received.

In order to address these deficiencies, the Regional Board inserted a reopener requirement into the TMDL that would to force the Regional Board to address and re-evaluate:

- 1.) The allowable winter dry weather exceedance days based on additional data on bacterial indicator densities in the wave wash.
- 2.) The reference system selected to set allowable exceedance levels; and
- 3.) The reference year used in the calculation of allowable exceedance days.

The TMDL went into effect on July 15, 2003. As noted in Resolution No. 2002-022 above, the reopener was supposed to have taken place within 4 years after the effective date of the TMDL (i.e. by July 15, 2007). (Regional Board Resolution No. 2002-022, p. 6, Attachment B to Resolution No. 2002-022.) To date, however, no reopener has occurred.

In preparation for the Regional Board's pending reopener, various responsible agencies have been collecting data in order to document and characterize the existing conditions and sources of bacteria contained in the Santa Monica Bay. In many cases, that information directly contradicts previously held beliefs regarding the natural, background levels of bacteria and the efficacy of the Regional Board's chosen monitoring sites and reference points. It is inappropriate for the Regional Board to issue an Order and NOV based on the current, inaccurate TMDL parameters. Instead, the Regional Board should address these alleged violations only after it has conducted its reopener, re-evaluated its current TMDL, and devised an accurate regulatory mechanism that takes into account all current information regarding beach conditions. Petitioner requests that the State Board set aside the Order and NOV for this reason.

H. THE MONITORING REQUIRED BY THE ORDER MODIFIES THE MS4 PERMIT WITHOUT A NOTICED HEARING

The MS4 Permit contains a monitoring program (Monitoring and Reporting Program No. CI 6948) that was incorporated into the permit at the time of its adoption on December 13, 2001. This monitoring program is very detailed and requires, inter alia, mass emissions, water column toxicity, tributary, and other monitoring for a variety of constituents and over a detailed timeline.

The MS4 Permit is both a NPDES permit and waste discharge requirement ("WDR") issued by the Regional Board under the Porter-Cologne Act (see Water Code §§ 13370-13389). A NPDES permit and WDR cannot be issued or modified except through prior notice and hearing. Water Code § 13378. The Act further provides that only a Regional Board can modify a WDR, and that this function cannot be delegated to the executive officer. Water Code § 13223(a) ("Each regional board may delegate any of its powers and duties vested in it by [the Porter-Cologne Act] excepting only the following: . . . (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement.")

The Order essentially creates a massive new addition to the MS4 monitoring program. The Order requires Petitioner to provide information on the sources of exceedances at each of the shoreline monitoring sites for which it is jointly responsible, provide details regarding dry weather discharge from the MS4 at each site, and evaluate the sources of exceedances, both upstream and in the proximity of the monitoring site.

The Order, however, was issued without notice and a public hearing. To the extent the Order require Petitioner to expand its monitoring efforts, the Order constitute a modification to the MS4 Permit without notice and hearing.

I. THE NOV AND ORDER UNLAWFULLY IMPOSES ON PETITIONERS RESPONSIBILITY FOR THE DISCHARGES OF OTHERS

The Order is based on the allegation that Petitioner is jointly responsible for the alleged exceedances. To the contrary, Petitioner is not responsible for the discharges of others and neither the Clean Water Act or the Porter-Cologne Act so provides. Petitioner is responsible solely for its own discharges.

J. TECHNICAL DEFECTS

Petitioner has requested that the Petition be placed in abeyance while we attempt to reach an amicable resolution with the Regional Board. Towards that effort, we are continuing to investigate and collect data related to the matters raised in the NOV and Order. At this time, the City is aware of the following discrepancies in the documents that giving rise to this Petition.

The exceedances of bacteriological indicators which are the subject of the identified violations were not associated with MS4 discharges that are the responsibility of the City of Hermosa Beach as follows:

SMB 5-2, 28th Street: The City of Hermosa Beach is not responsible for exceedances of bacterial objectives associated with SMB 5-2 monitoring site at the zero point of 28th Street storm drain in Manhattan Beach. As shown in Exhibit "C," land area within the City of Hermosa Beach does not contribute runoff via the 28th Street storm drain in Manhattan Beach.

SMB 5-3, Manhattan Pier: The City of Hermosa Beach is not responsible for exceedances of bacterial objectives associated with the SMB 5-3 monitoring site adjacent to the Pier in Manhattan Beach. As shown in Exhibit "C," land area within the City of Hermosa Beach does not contribute runoff via storm drains that outfall in the vicinity of Manhattan Beach Pier.

SMB 6-5, Avenue I, Redondo Beach: The City of Hermosa Beach is not responsible for exceedances of bacterial objectives associated with SMB 6-5 Avenue I in Redondo Beach. As shown in Exhibits "C" and "D," land area within the City of Hermosa Beach does not contribute runoff via storm drains that outfall any farther south than SMB 6-1.

Accordingly, the NOV and Order were not supported by substantial evidence. We anticipate that as the investigation continues, Petitioner may discover additional discrepancies or information that may give rise to additional legal issues that will be appropriate for review. City reserves its right to supplement this Petition in the event the investigation uncovers additional information relevant to these matters.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the issuance of the subject NOV and Order was improper, inappropriate, unlawful, and not supported by substantial

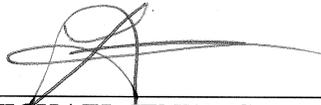
evidence. Petitioner respectfully requests that the State Board grant this petition and review the Regional Board's action in issuing the NOV and Order.

REQUEST TO HOLD PETITION IN ABEYANCE

Pursuant to 23 Cal. Code Regs. §2050.5, petitioner respectfully requests that this Petition be held in abeyance while the petitioner pursues resolution of this matter with the Regional Board.

Dated: April 3, 2008

Respectfully submitted,
CITY OF HERMOSA BEACH



By: MICHAEL JENKINS
LAUREN B. FELDMAN
JENKINS & HOGIN, LLP
Attorneys for Petitioner,
CITY OF HERMOSA BEACH

Appendix:

Exhibit A: Notice of Violation

Exhibit B: Order

Exhibit C: City of Hermosa Beach Drainage Areas

Exhibit D: Stormwater Shed Areas Draining in Herondo

EXHIBIT "A"

**NOTICE OF VIOLATION (ORDER NO 01-182 AS AMENDED BY
ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042,
NPDES PERMIT NO. CAS004001, WDID4B190175001)**



California Regional Water Quality Control Board Los Angeles Region



Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Stephen R. Burrell
City Manager
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90245-3884

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID 4B190175001)

Dear Mr. Burrell:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Hermosa Beach is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

California Environmental Protection Agency



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The City of Hermosa Beach is hereby notified that technical staff has concluded that Hermosa Beach is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at four shoreline monitoring sites located along Santa Monica Bay beaches to which the City of Hermosa Beach discharges via the MS4, on 29 days, which included 51 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachments, and incorporated herein by reference. The City of Hermosa Beach is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

CIVIL LIABILITY

Pursuant to CWC § 13385, the City of Hermosa Beach is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Hermosa Beach may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the City of Hermosa Beach to submit a variety of reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the City's plans for additional corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

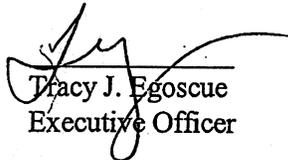
Mr. Stephen R. Burrell

- 3 -

March 4, 2008

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachments 35-38
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Mr. Homayoun Behboodi, Associate Engineer, City of Hermosa Beach
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugène Bromley, U.S. EPA, Region 9

California Environmental Protection Agency

 Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.