

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 requires Petitioner to expand its monitoring efforts, the Order constitutes 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 City of West Hollywood discharges storm water via regional underground storm drains into Ballona Creek, a subwatershed of Santa Monica Bay. The Santa Monica Bay monitoring site for West Hollywood and other cities discharging to Ballona Creek is at Dockweiler Beach, BC-01. West Hollywood is located upstream, approximately 10 miles from monitoring site BC-01.

It has not been conclusively determined that the City is responsible for the exceedances at BC-01/Dockweiler Beach listed in the NOV; West Hollywood is the city most upstream and inland from Santa Monica Bay and is responsible for only 3% of the land use impacts on

Ballona Creek, even less so for Santa Monica Bay. The City of Los Angeles, Dept of Status and Trends, has been monitoring sites in Ballona Creek, upstream from BC-01 since 2002. The monitoring site in the first reach of Ballona Creek is the only site that the City of West Hollywood directly empties into. While the City of West Hollywood empties into this area, a much larger area of runoff is from other jurisdictions. Additionally, this site, at National Blvd, designated for REC-2 purposes, has a 96% compliance rate over the monitoring period from January 2002 through January 2007. As a result, 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 West Hollywood.

Accordingly, the NOV and Order was 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 WEST HOLLYWOOD


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

Dated: April 2, 2008.

Appendix:
Exhibit A: Notice of Violation
Exhibit B: Order

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, WDID4B19219001)**



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Paul Arevalo
City Manager
City of West Hollywood
8300 Santa Monica Boulevard
West Hollywood, CA 90069-4314

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, WDDID 4B190219001)

Dear Mr. Arevalo:

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 West Hollywood 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.

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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 West Hollywood is hereby notified that technical staff has concluded that West Hollywood 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 one shoreline monitoring site located along Santa Monica Bay beaches to which the City of West Hollywood discharges via the MS4, on 119 days, which included 209 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 attachment, and incorporated herein by reference. The City of West Hollywood is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

CIVIL LIABILITY

Pursuant to CWC § 13385, the City of West Hollywood 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 West Hollywood 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 West Hollywood 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.

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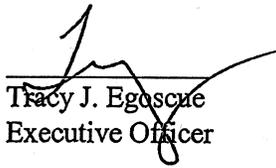
Mr. Paul Arevalo

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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
Attachment 40
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Jan Harmon, Environmental Program Coordinator, West Hollywood
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency



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TABLE 1

**WEST HOLLYWOOD
 SUMMARY OF VIOLATIONS OF BACTERIA
 RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
 ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042**

Site ID	Single Sample RWL Violations				30-day Geometric Mean RWL Violations			Total RWL Violations by Site	Total Days of Violations by Site
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus		
SMB BC-01	30	15	7	8	113	36	0	209	119

ATTACHMENT

**VIOLATIONS OF BACTERIA RECEIVING WATER LIMITATIONS BY
SHORELINE MONITORING SITE**

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					1452		
9/15/2006					1225		
9/16/2006					1176		
9/17/2006					1186		
9/18/2006					1180		
9/19/2006					1137		
9/20/2006					1020		
4/24/2007	>13000	4400	190	>13000			
6/15/2007				1900			
6/22/2007	11000						
6/28/2007	11000						
6/30/2007			140		1092		
7/1/2007					1096		
7/2/2007					1191		
7/3/2007					1315		
7/4/2007					1259		
7/5/2007					1423		
7/6/2007					1516		
7/7/2007					1587		
7/8/2007					1512		
7/9/2007					1536		
7/10/2007					1505		
7/11/2007					1307		
7/12/2007					1513		
7/13/2007	13000				1755		
7/14/2007					1817		
7/15/2007					1813		
7/16/2007					1814		
7/17/2007	>13000				1992		
7/18/2007	>13000				2170		
7/19/2007	>13000				2675		
7/20/2007					2161		
7/21/2007	>13000				2746		
7/22/2007					2570		
7/23/2007					2531		
7/24/2007					2599		
7/25/2007					2427		
7/26/2007	13000				2612		
7/27/2007	>13000				2910		
7/28/2007					2650		
7/29/2007					2602		
7/30/2007					2563		
7/31/2007					2482		
8/1/2007	13000				2676		