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7  
8 **STATE OF CALIFORNIA**

9 **STATE WATER RESOURCES CONTROL BOARD**

10 **IN THE MATTER OF THE PETITION OF**  
11 **THE CITY OF TORRANCE FOR**  
12 **REVIEW OF AN ORDER PURSUANT TO**  
13 **CALIFORNIA WATER CODE SECTION**  
14 **13383 (REGARDING VIOLATIONS OF**  
15 **ORDER NO. 01-182 AS AMENDED BY**  
16 **ORDER NO. R4-2006-0074 AND ORDER**  
**NO. R4-2007-0042, NPDES PERMIT NO.**  
**CAS004001, WDID 4B190215001) OF THE**  
**CALIFORNIA REGIONAL WATER**  
**QUALITY CONTROL BOARD FOR LOS**  
**ANGELES REGION**

**PETITION FOR REVIEW**  
**[WATER CODE § 13320; 23 CCR 2050]**  
**REQUEST TO HOLD IN ABEYANCE**  
**[23 CCR 2050.5]**

17 Petitioner the City of Torrance respectfully requests that the State Water Resources  
18 Control Board review the Order issued by the Regional Water Quality Control Board, Los  
19 Angeles Region ("Regional Board") on March 4, 2008. Petitioner also requests that this  
20 Petition be held in abeyance pursuant to 23 Cal. Code Regs. § 2050.5 while the Petitioner  
21 attempts to resolve the dispute with the Regional Board.

22 **1. Name, address, telephone number and email address of the petitioner**

23 City of Torrance  
Office of the City Manager  
24 3031 Torrance Blvd.  
Torrance, CA 90503  
25 Attn: LeRoy J. Jackson, City Manager  
Telephone: (310) 618-5880  
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27 With copies to:  
28

1 City of Torrance  
2 Public Works Department  
3 20500 Madrona Avenue.  
4 Torrance, CA 90503  
5 Attn: Rob Beste, Public Works Director  
6 Telephone: (310) 781-6900  
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17 **2. The Specific Action Or Inaction Of The Regional Board Which The State Board  
18 Is Requested To Review And A Copy Of The Order**

19 Petitioner requests review of the Order Pursuant To California Water Code Section  
20 13383 (Regarding Violations of Order No. 01-182 as amended by Order No. R4-2006-0074  
21 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190215001 (the  
22 "Order"). A copy of the Order is attached as Exhibit A. Petitioner requests that the State  
23 Board review the Order in its entirety, including the entire "Requirement to Provide  
24 Information" section of the Order.

25 **3. The Date On Which The Regional Board Acted**

26 The Executive Officer of the Regional Board issued the Order on March 4, 2008.

27 **4. Statement Of Reasons Why The Action Was Inappropriate Or Improper**

28 Petitioners seek this review because:

(1) The Order seeks information regarding alleged violations of receiving water  
limitations incorporated into the MS4 Permit on September 14, 2006 and August 9, 2007.  
The receiving water limitation relevant to Petitioner provides: "During Summer Dry Weather  
there shall be no discharges of bacteria from MS4s into the Santa Monica Bay that cause or  
contribute to exceedances in the Wave Wash, of the applicable bacteria objectives." (MS4  
Permit, p. 24). The receiving water limitation was incorporated to reflect the Santa Monica  
Bay ("SMB") Beaches Bacteria Dry Weather TMDL.

1           However, the water quality objectives that are the subject of this receiving water  
2 limitation were adopted by the Regional Board and placed in the Basin Plan for the Los  
3 Angeles Region without consideration of the application to stormwater or urban runoff of the  
4 factors set forth in Water Code § 13241 or Water Code § 13000. As such, the bacteria  
5 objectives cannot be lawfully applied to stormwater discharges or urban runoff, and therefore  
6 cannot be a basis either for the violations alleged in the Notice of Violation, Dated March, 4,  
7 2008 (the "NOV"). A copy of the NOV is attached as Exhibit B.

8           (2) The Regional Board has made an express finding in the MS4 Permit as to what  
9 procedures would be followed by the permittees if bacteria exceedances were recorded. That  
10 procedure is set forth in Finding E.37 of the MS4 Permit, and applies to the Permit  
11 amendments to reflect the SMB Beaches Bacteria Dry Weather TMDL. That procedure  
12 requires the Regional Board to generally first issue an investigative order "pursuant to Cal.  
13 Water Code § 13267 or § 13225" to determine the source of the exceedance. If the  
14 investigation determines that the permittee's MS4 discharge is not responsible for causing or  
15 contributing to the exceedance, or that the discharge was appropriately treated, no  
16 enforcement will follow. Only after the Regional Board had determined that one or more  
17 permittees had caused or contributed to violations of receiving water limitations would "the  
18 Regional Board . . . consider appropriate enforcement action, including a cease and desist  
19 order with or without a time schedule for compliance, or other appropriate enforcement  
20 action depending upon the circumstances and the extent to which the Permittee(s) has  
21 endeavored to comply with these provisions." MS4 Permit, Finding E.37. This process,  
22 which emphasizes first determining whether there is liability by an MS4 permittee for  
23 exceedances of the bacteria objectives, was completely ignored by the Executive Officer in  
24 issuing the Order under Water Code § 13383 and in issuing the accompanying NOV.

25           (3) The Order seeks information regarding alleged exceedances of receiving water  
26 limitations established by the incorporation of the SMB Beaches Bacteria Dry Weather  
27 TMDL on September 16, 2006. As set forth in the Petition filed by the County of Los  
28

1 Angeles and the Los Angeles County Flood Control District with the State Board on or about  
2 October 16, 2006, such incorporation was unlawful and, thus, cannot form the basis for the  
3 NOV's alleged exceedances of the MS4 Permit's receiving water limitations at SMB  
4 Beaches monitoring locations or for the Order's request for information relating these alleged  
5 exceedances.

6 (4) The Executive Officer has improperly employed Water Code § 13383 as authority  
7 for the Order. Section 13383 was intended by the Legislature to ensure that state law was  
8 consistent with the monitoring and reporting requirements of the Clean Water Act. It was not  
9 intended to provide regional boards with an investigative power that is greater than that found  
10 in the federal Act. Water Code § 13383 is clearly designed to provide a mechanism whereby  
11 the Regional Board can obtain "monitoring, inspection or entry" information regarding a  
12 permittee's discharges. The purpose of such reports is to enable the Regional Board to make  
13 a reasonable characterization of that discharge. The Order, however, is not being utilized for  
14 that purpose.

15 Instead of asking for additional "monitoring" of a permittee's discharges from the  
16 MS4 (the only appropriate subject for inquiry), the Order requires the generation of  
17 information not within Petitioner's possession or control. The Order requires an "evaluation"  
18 of "sources," including those "within proximity" of the shoreline. Thus, the Order purports  
19 to require Petitioner to examine other sources and discharges in order to prove that its own  
20 discharges could not have caused an exceedance in the shoreline monitoring. This type of  
21 "evaluation" goes far beyond monitoring at the point of discharge and exceeds the Executive  
22 Officer's authority under § 13383.

23  
24 (5) Water Code § 13383 states that a regional board may require a discharger "to  
25 provide other information as may be reasonably required." The Order seeks a wide variety of  
26 information, including items far beyond the scope of an appropriate request for information,  
27 including information on "corrective and preventative actions," provision of a "time  
28 schedule," "evaluation" of the sources of alleged exceedances, and the provision of

1 exculpatory evidence and other information, as described in Section 2 above. Such  
2 information is not “reasonably required” of Petitioner.

3 (6) The Order improperly seeks information on waters not impacted by discharges  
4 from the MS4, the only discharges for which Petitioner has responsibility under the MS4  
5 Permit. For example, the Order seeks information on exceedances at harbor and shoreline  
6 locations which may not be in near proximity to any MS4 discharge point. This stems from  
7 the fact that several of the monitoring locations that recorded alleged exceedances of the  
8 bacteria standard are not in proximity to MS4 discharge points. The Order further seeks  
9 detailed information on discharges from “sources in proximity to the shoreline monitoring  
10 location,” but do not specify that such sources be part of the MS4. Petitioner is not required  
11 to monitor locations not influenced by the MS4, as it has no legal responsibility, under the  
12 MS4 Permit, for discharges not associated with the MS4.

13 (7) The MS4 Permit, which is alleged in the NOV and in the Order to have been  
14 violated by Petitioner, contains a detailed monitoring program. By requiring Petitioner to  
15 submit detailed reports not required in the monitoring program under the MS4 Permit,  
16 including the provision of exculpatory evidence and the investigation of non-MS4  
17 discharges, the Order modifies and amends the monitoring program set forth in the MS4  
18 Permit without notice or hearing, in violation of the Porter-Cologne Water Quality Act.

19 The MS4 Permit is both a NPDES permit and waste discharge requirement (“WDR”)  
20 issued by the Regional Board under the Porter-Cologne Act (see Water Code §§ 13370-  
21 13389). A WDR cannot be issued except through prior notice and hearing. Water Code §  
22 13378. The Act further provides that only a *Regional Board* can modify a WDR, and that  
23 this function *cannot* be delegated to the executive officer. Water Code § 13223(a) (“Each  
24 regional board may delegate any of its powers and duties vested in it by [the Porter-Cologne  
25 Act] excepting only the following: . . . (2) the issuance, *modification*, or revocation of any  
26 water quality control plan, water quality objectives, or *waste discharge requirement*.”)  
27 (emphasis added).  
28

1 (8) The Order requires Petitioner to investigate discharges of third persons, in  
2 violation of Water Code § 13383. As noted above, the Order requires assessment of waters  
3 not associated with MS4 discharges, waters that may have been impacted by bacteria sources  
4 including septic systems, watercraft, bathers or wildlife.

5 **5. The Manner In Which The Petitioner Is Aggrieved**

6 Petitioner is aggrieved by the Order because it is based on incorrect allegations of  
7 violations of the NPDES permit. The Order purports to make Petitioner responsible for  
8 assembling detailed information and imposes an excessive and unnecessary financial burden  
9 to prove compliance. The failure to comply with the Order, moreover, subjects Petitioner  
10 further to administrative civil liability, or potentially to judicially imposed civil penalties, of  
11 up to \$10,000 per day or \$25,000 per day, respectively.

12 **6. The Action That Petitioner Requests The State Board To Take**

13 Petitioner requests that the State Board issue an order either:

- 14 (a) setting aside the Order of the Executive Officer of the Regional Board in  
15 its entirety; or  
16 (b) directing the Executive Officer of the Regional Board to withdraw the  
17 Order directed to Petitioner.

18 **7. Points And Authorities in Support of Petition**

19 **A. THE REGIONAL BOARD'S RELIANCE ON WATER CODE  
20 SECTION 13383 IS MISPLACED**

21 The Regional Board purports to base its Order upon Water Code section 13383. That  
22 reliance is misplaced for a number of reasons.

23 1. The Order Exceeds the Statutory Scope of Water Code Section 13383

24 The Regional Board's Order is improper because the requirements set forth therein go  
25 well beyond the scope of monitoring requirements permitted under Water Code section  
26 13383. The relevant portions of Water Code section 13383 state:

- 27 (a) The state board or a regional board may establish *monitoring, inspection,*  
28 *entry, reporting, and recordkeeping requirements.* . . . for any person who

1 discharges, or proposes to discharge, to navigable waters. . . .

2 (b) The state board or the regional boards may require any person subject to  
3 this section to *establish and maintain monitoring equipment or methods,*  
4 *including, where appropriate, biological monitoring methods, sample*  
5 *effluent as prescribed, and provide other information as may be reasonably*  
6 *required.* Water Code § 13383 (emphasis added.)<sup>1</sup>

7 The Order contains language requesting that the Petitioner produce reports with the  
8 sources of the violations, remedial actions taken, and additional corrective and preventative  
9 actions that will be taken. This goes far beyond a requirement that a permittee “monitor” the  
10 effluent from its own storm drains.

11 The Order for additional information is unwarranted. Water Code section 13383 is  
12 clearly designed to provide a mechanism whereby the Regional Board can obtain  
13 “monitoring, inspection or entry” information regarding a permittee’s discharges. The  
14 purpose of such reports is to enable the Regional Board to make a reasonable characterization  
15 of that discharge. The Order, however, is not being utilized for that purpose. Instead of  
16 asking for additional “monitoring” of a permittee’s discharges into a waterway that ultimately  
17 flows into the Pacific Ocean, the Order requires an “evaluation” of “sources,” including those  
18 “within proximity” of the shoreline. Thus, the Order purports to require Petitioner to  
19 examine other sources and discharges in order to prove its own discharges could not have  
20 caused an exceedance in the shoreline monitoring. This type of “evaluation” goes far beyond  
21 monitoring at the point of discharge and exceeds the plain meaning of section 13383.

22  
23  
24 <sup>1</sup> Pursuant to Water Code § 13373, the term “biological monitoring” has the same meaning as it does in the  
25 Federal Water Pollution Control Act, which is commonly referred to as the Clean Water Act, 33 U.S.C. §1251  
et. seq. Section 502 of the Clean Water Act defines “biological monitoring” as:

26 “[T]he determination of the effects on aquatic life, including accumulation of pollutants in  
27 tissue, in receiving waters due to the discharge of pollutants (A) by techniques and  
28 procedures, including sampling of organisms representative of appropriate levels of the food  
chain appropriate to the volume and the physical, chemical, and biological characteristics of  
the effluent, and (B) at appropriate frequencies and locations.”

1           2.     The Order is Unreasonable

2           To the extent the Regional Board's Order requires the petitioner to compile  
3 information beyond its jurisdictional control, it is unauthorized. Although Water Code  
4 section 13383(b) permits the Regional Board to request "other information," such requests  
5 can only be "reasonably" imposed. Water Code § 13383(b) ("The state board or regional  
6 boards may require any person subject to this section to . . . provide other information as may  
7 be *reasonably required*."') (Emphasis added.) Any reports are also limited in scope by Water  
8 Code section 13225(c), which states that:

9           [T]he burden, including costs, of such reports shall bear a reasonable  
10           relationship to the need for the report and the benefits to be obtained  
11           therefrom.

12           The information requested by the Regional Board is unreasonable. It is not just  
13 limited to each individual Petitioner's discharge. Rather, the Regional Board's Order  
14 purports to require Petitioner to analyze discharges and make assumptions regarding factors  
15 well beyond its individual boundary. The Order places the obligation on the Petitioner to not  
16 only examine shoreline monitoring sites, that are outside of its boundary, but to also conduct  
17 an analysis of all upstream sources. This is not reasonable, and is therefore not permitted  
18 under Water Code section 13383 or Water Code section 13225. *See* Water Code § 13383(b)  
19 (stating that the Regional Board's request must be reasonable.); Water Code § 13225(c).

20           Furthermore, the language in the Order is patently unfair in that it improperly places  
21 the burden on Petitioner to prove the negative (*i.e.* that it could not have contributed to the  
22 alleged discharge violations) without first proving that the Petitioner actually caused the  
23 shoreline contamination. The Regional Board has not met its initial burden. It has not shown  
24 that the shoreline bacteria exceedances came from any particular water body, much less that  
25 Petitioner caused such an exceedance. None of the samples relied on by the Regional Board  
26 indicate that the high bacteria levels came from an MS4, or even from the various reaches to  
27 which the MS4s discharge. There is no evidence whatsoever that Petitioner's discharges  
28 were in any way related to the high bacteria flow. Petitioner should not be required to prove

1 it did not do something when the Regional Board has not raised even a rebuttable  
2 presumption that the contamination results from its actions. *See* Evidence Code § 500;  
3 *Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1667-1668.

4 Because these requests are unreasonably broad, and because the Regional Board has  
5 not met its burden for establishing discharge violations by Petitioner, any and all  
6 extraterritorial requirements should be stricken from the Orders.

7 **B. THE ORDER'S REQUIREMENTS CONSTITUTE UNFUNDED**  
8 **MANDATES**

9 To the extent the Order places a burden on Petitioner to inspect areas beyond its  
10 jurisdictional control, the Order constitutes an unfunded state mandate. Article XIII B,  
11 Section 6 of the Constitution prevents the state from shifting the cost of government from  
12 itself to local agencies without providing a "subvention of funds to reimburse that local  
13 government for the costs of the program or increased level of service . . ." State agencies are  
14 not free to shift state costs to local agencies without providing funding merely because those  
15 costs were imposed upon the state by the federal government. If the state freely chooses to  
16 impose costs upon a local agency as a means of implementing a federal program, then those  
17 costs should be reimbursed by the state agency. *See County of Los Angeles v. Commission on*  
18 *State Mandates* (2007) 150 Cal. App. 4th 898; *Hayes v. Commission on State Mandates*  
19 (1992) 11 Cal. App. 4th 1564, 1593-1594. If the state refuses to appropriate money to  
20 reimburse a city, the enforcement of the state mandate can potentially be enjoined by a court.  
21 *See Lucia Mar Unified School District v. Honig* (1988) 44 Cal. 3d 830, 833-834.

22 Prior to complying with the Regional Board's requests, the state must provide Petitioner with  
23 the appropriate funding or the matter needs to go before the Commission on State Mandates.

24 **C. THE ORDER AND NOTICE OF VIOLATION SHOULD BE**  
25 **POSTPONED PENDING THE RESULTS OF THE TMDL REOPENER**

26 The Order and NOV are untimely, considering the TMDL is outdated and  
27 overdue for a reopener. According to Regional Board Resolution No. 2002-022, the  
28 TMDL relies on monitoring sites and reference points that may potentially skew the

1 data and reduce the overall effectiveness of the TMDL. Regional Board Resolution  
2 No. 2002-022, ¶ 23, p. 4.

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

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

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

13  
14 The TMDL went into effect on July 15, 2003. As noted in Resolution No. 2002-022  
15 above, the reopener was supposed to have taken place within 4 years after the effective date  
16 of the TMDL (*i.e.* by July 15, 2007). (Regional Board Resolution No. 2002-022, p. 6,  
17 Attachment B to Resolution No. 2002-022.) To date, however, no reopener has occurred.

18 In preparation for the Regional Board's pending reopener, Petitioner and the other  
19 agencies that are subject to the Order have been collecting data in order to document and  
20 characterize the existing conditions and sources of bacteria contained in the Santa Monica  
21 Bay. In many cases, that information directly contradicts previously held beliefs regarding  
22 the natural, background levels of bacteria and the efficacy of the Regional Board's chosen  
23 monitoring sites and reference points. Petitioner and the other agencies are compiling that  
24 data in order to assist the Regional Board at the time of the reopener.

25 It is inappropriate for the Regional Board to issue the Order and NOV based on the  
26 current, inaccurate TMDL parameters. Instead, the Regional Board should address these  
27 alleged violations only after it has conducted its reopener, re-evaluated its current TMDL,  
28 and devised an accurate regulatory mechanism that takes into account all current information

1 regarding beach conditions. Petitioner requests that the State Board set aside the Order and  
2 NOV.<sup>2</sup>

3 **D. THE NOTICE OF VIOLATION AND ORDER ARE**  
4 **UNENFORCEABLE AS THEY ARE BASED UPON BACTERIA**  
5 **TMDLS THAT WERE DEVELOPED TO IMPLEMENT FAULTY**  
6 **WATER QUALITY STANDARDS**

7 The bases for the NOVs and the 13383 Orders are alleged violations of particular  
8 sections of the Los Angeles Municipal NPDES permit ("LA MS4 Permit"). The relevant  
9 portions of the LA MS4 Permit relied upon for the issuance of the NOVs and 13383 Orders  
10 were added through amendments adopted in September of 2006 and in August of 2007, so as  
11 "to implement the summer dry weather waste load allocations established in the SMB  
12 Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey  
13 Harbor Mothers' Beach and Back Basins Bacteria TMDL" (collectively, "Bacteria  
14 TMDLs").

15 The Bacteria TMDLs were adopted to implement specific water quality standards set  
16 forth in the Water Quality Control Plan for the Los Angeles Region ("Basin Plan"). By law,  
17 however, such water quality standards were required to have been adopted only after an  
18 analysis of the various factors and considerations set forth under California Water Code  
19 sections 13000 and 13241 had been completed. For example, Water Code Section 13000  
20 requires the regulation of the State's waters "to attain the highest water quality which is  
21 reasonable, considering all demands being made and to be made on those waters and the total  
22 values involved, beneficial and detrimental, economic and social, tangible and intangible."  
(Water Code § 13000.)

23 Further, Water Code Section 13241 requires the establishment of water quality  
24 objectives so as to ensure the "reasonable protection of beneficial uses," based on whether  
25 the desired water quality conditions "could reasonably be achieved," along with a

26  
27 <sup>2</sup> Although the State Board's Water Quality Enforcement Policy ("Enforcement Policy") indicates that the NOV  
28 is not appealable to the Regional Board, Petitioner does not believe this is correct. Water Code section 13320  
states that "any aggrieved person may petition the state board to review" "any action or failure to act by a  
regional board." The NOV clearly constitutes an action from the Regional Board in that they are signed by the  
Executive Officer. State law trumps the Enforcement Policy.

1 consideration of the “economic” impacts of the water quality standards on the dischargers in  
2 question, as well as a consideration of various other factors, such as the impacts on housing  
3 within the region. (See Water Code §§ 13241 and 13241(a)-(f); also see *City of Burbank v.*  
4 *State Water Resources Control Board* (2005) 35 Cal.4th 613, where the California Supreme  
5 Court determined that Water Code § 13241 requires a consideration of the “discharger’s cost  
6 of compliance”.)

7 With respect to the water quality standards in the Basin Plan that were used to  
8 develop the Bacteria TMDLs (with the TMDLs then forming the bases for the amendments  
9 to the LA MS4 Permit), vis-à-vis “storm water” (which term includes urban and dry weather  
10 runoff pursuant to 40 CFR § 122.26(b)(13)), such water quality standards have to date not  
11 been developed based on a consideration of the Water Code section 13241 and 13000 factors  
12 and requirements.

13 Because the water quality standards that are alleged to be violated under the NOV and  
14 the Order, have not been developed through the analysis required under Water Code sections  
15 13241 and 13000, with respect to storm water, the NOV and the Order were wrongly issued.

16  
17 **E. INCORRECT CALCULATION OF NUMBER OF VIOLATIONS AND  
IMPROPER RELIANCE ON MONITORING DATA**

18 The NOV incorrectly calculates alleged Receiving Waters Limitations violations by  
19 monitoring site for each bacteria indicator, when the TMDL expresses waste load allocations  
20 by the number of days that an exceedance is present. In Table 1 of the NOV, the Regional  
21 Board alleges multiple violations on the same day for days when more than one indicator of  
22 exceedances may have been reported, as summarized in the Total RWL Violations by Site  
23 column. A copy of the NOV is attached as Exhibit B. According to Numeric Target and  
24 Waste Load Allocations set forth in Table 7-4.1 of Attachment A to Resolution No. 02-004,  
25 the single sample targets at each existing shoreline monitoring site are assigned an allowable  
26 number of *exceedance days* for summer dry weather and winter dry weather. Thus, any  
27 citation of multiple violations for the same monitoring day should be stricken from the NOV.

28 The NOV also incorrectly utilizes additional monitoring data for determining

1 compliance with the TMDL that was not to be used before the LA MS4 Permit was amended  
2 on August 9, 2007.

3 As specified in Table 7-4.3 of Attachment A to Resolution No. 02-004 for dry  
4 weather, the responsible jurisdictions and agencies were to select between daily and weekly  
5 shoreline sampling when preparing the Monitoring Plan. Accordingly, under section 4.1  
6 Sampling Schedule, the Plan states that, "[t]he proposed compliance monitoring program  
7 comprises 67 sites monitored on a weekly basis. All routine samples will be collected on  
8 Mondays, and accelerated samples collected on Wednesdays and Fridays." Accelerated  
9 sampling is triggered at a monitoring location whenever analysis of a Monday sample  
10 indicates that an exceedance has occurred. Weekly sampling resumes for that location once  
11 the accelerated sample results demonstrate that bacteria levels no longer exceed the limits.  
12 The Monday data set, along with any required accelerated sampling, would be utilized in  
13 determining compliance with the TMDL as referenced in Finding E. 32 and in footnote 5 of  
14 the Receiving Waters Limitation Provision of the LA MS4 Permit at the time the permit was  
15 reopened on September 14, 2006. However, when the MS4 Permit was reopened to  
16 incorporate the Marina del Rey Bacteria TMDL on August 9, 2007, the same finding and  
17 footnote were further revised to provide that monitoring data collected through the  
18 Monitoring and Reporting Program CI 6948 of the LA MS4 Permit would also be used to  
19 assess compliance with the Receiving Waters Limitations. Under CI 6948, additional  
20 monitoring on other days of the week (Tues-Thurs) has been conducted at various monitoring  
21 sites throughout the jurisdictional groups. This additional monitoring data should not be used  
22 for determining compliance with SMB Beaches Bacteria TMDL/Receiving Waters  
23 Limitations provision of the MS4 Permit on dates before the MS4 Permit was amended on  
24 August 9, 2007.

#### 25 **F. TECHNICAL DEFECTS**

26 The NOV alleges that Torrance violated the SMB Beaches Bacteria Dry Weather  
27 TMDL at two sites, on seven days: 10/31/2006, 6/4/2007, 10/25/2007, 10/26/2007 at Site  
28 SMB 6-01, Herondo Street SD; and 10/30/2006, 6/25/2007, 8/13/2007 at Site SMB 6-05,

1 Avenue I SD. For two reasons, none of the sample exceedences violate the SMB Beaches  
2 Bacteria Dry Weather TMDL.

3 The SMB Beaches Bacteria Dry Weather TMDL was adopted by the RWQCB on  
4 January 24, 2002, by Resolution No. 02-004. Section 8.2 of the SMB Beaches Bacteria Dry  
5 Weather TMDL provides in relevant part as follows: "Within three years of the effective date  
6 of this TMDL, there may be no exceedances at any location during summer dry weather  
7 (April 1 to October 31)." The preferred implementation adopted by the Regional Board for  
8 achieving compliance is to divert dry weather storm drain flows to treatment plants. SMB  
9 Beaches Bacteria Dry Weather TMDL, Section 8.2 and Table 13. A copy of the relevant  
10 portions of the SMB Beaches Bacteria Dry Weather TMDL is attached as Exhibit C  
11 [Resolution 02-004, Cover Page, Table of Contents, Section 8.2, Section 9.2, and Table 13].

12 Diversion of dry weather storm drain flows from sites SMB 6-01 (Herondo Street  
13 SD) and SMB 6-05 (Avenue I SD) to treatment plants has been in effect for some time, since  
14 08/16/2005 for SMB 6-01, and since 2/16/2006 for SMB 6-05. The construction and  
15 operation of diversion facilities – the Regional Board’s preferred implementation measure –  
16 is by itself sufficient to achieve TMDL compliance, particularly under the reasonableness  
17 standard imposed by Water Code § 13000. Data received from the Los Angeles Department  
18 of Public Works indicates that on all dates of exceedance set forth in the NOV, diversion  
19 facilities were in place and that on 6 of the seven alleged dates of violation, storm drain  
20 diversion to treatment plants was in operation. Thus, the TMDL compliance target was  
21 achieved in all cases. SMB Beaches Bacteria Dry Weather TMDL, Section 8.2. See Exhibit  
22 D, Email from Kathleen McGowan dated March 26, 2008 at 12:51 PM and attached Los  
23 Angeles County Department of Public Works, Table, Santa Monica Bay Beaches Status of  
24 Low Flow Diversions Jurisdictions 2&3, 5&6.

25 Moreover, assuming for the sake of argument that the non-operation of existing  
26 diversion facilities at Site SMB 6-05 on 10/30/06 resulted in a single sample test result  
27 showing an exceedance attributable to Petitioner, . With respect to that one potential  
28 remaining date of violation, a single sample result showed an exceedance of fecal coliform

1 on the test date of 10/30/2006. Under the provisions of the SMB Beaches Bacteria Dry  
2 Weather TMDL, that single sample will not establish an exceedance. "Once source  
3 elimination, treatment or diversion is implemented for a freshwater outlet (i.e., storm drain or  
4 creek) and [sic] exceedance will only be considered a violation upon sampling confirmation  
5 within 24 hours." SMB Beaches Bacteria Dry Weather TMDL, Section 9.2. The NOV  
6 provides no evidence of sampling confirmation at Site SMB 6-05 on October 31, 2006.  
7 Exhibit B-7. That exceedance should therefore be stricken from the NOV.

8 Petitioner has requested that the Petition be placed in abeyance while we attempt to  
9 reach an amicable resolution with the Regional Board. Towards that effort, we are continuing  
10 to investigate and collect data related to the matters raised in the NOV and Order. At this  
11 time, the City is aware of the above-mentioned discrepancies in the documents that giving  
12 rise to this Petition. We anticipate that as the investigation continues, Petitioner may discover  
13 additional discrepancies or information that may give rise to additional claims. Torrance  
14 requests that it be able to supplement this Petition as the investigation uncovers additional  
15 information relevant to these matters.

16 **8. Statement That The Petition Has Been Sent To The Appropriate Regional Board**

17 A copy of this Petition was mailed to the Executive Officer of the Regional Board on  
18 April 3, 2008.

19 **9. Statement Regarding Raising Substantive Issues Or Objections Before The  
20 Regional Board**

21 The substantive issues and objections raised in this Petition could not have been  
22 raised before the Regional Board because the Order was issued by the Executive Officer  
23 without prior notice or hearing.

24 **10. Conclusion**

25 For the foregoing reasons, Petitioner respectfully submits that the issuance of the  
26 Order was improper, inappropriate, unlawful, and not supported by substantial evidence.  
27 Petitioner respectfully requests that the State Board issue an order either: (a) setting aside the  
28 Order of the Executive Officer of the Regional Board in its entirety or (b) directing the  
Executive Officer of the Regional Board to withdraw its Order directed to the Petitioner.

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**11. 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

JOHN L. FELLOWS III  
City Attorney

By:   
\_\_\_\_\_  
John L. Fellows III, City Attorney  
Attorney for Petitioner,  
City of Torrance



10. CONCLUSION..... 15

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

Ss

3 COUNTY OF LOS ANGELES

4 I am employed in the county of Los Angeles, State of California, I, the undersigned,  
5 declare that I am over 18 years of age, and not a party to the within cause; my business address is  
6 3031 Torrance Boulevard, Torrance, CA 90503. On this date I served the attached document  
described as:

7 **PETITION FOR REVIEW**

8 on the person(s) identified below, by placing a true copy thereof in sealed envelope  
addressed to the following:

9 See Mailing List

10 By the following means:

11 ( X ) **MAIL:** I am "readily familiar" with the City's practice of collection and  
12 processing correspondence for mailing. Under that practice it would be deposited with the U.S.  
Postal Service on that same day with postage placed thereon, fully pre-paid at Torrance,  
13 California in the ordinary course of business. I am aware that, on motion of the party served,  
service is presumed invalid if postal cancellation date or postage meter date is more than one day  
14 after the date of deposit for mailing in affidavit.

15 ( X ) **BY EMAIL:** By transmitting a true copy thereof by email from  
lcorona@tornet.com to jbashaw@waterboards.ca.gov

16 ( ) **OVERNIGHT MAIL:** By placing a true copy thereof, enclosed in a sealed  
17 envelope, to be delivered by hand to the addressee(s) shown above.

18 ( ) **BY FACSIMILE:** By transmitting a true copy(ies) thereof by facsimile from  
19 facsimile # to the interested party(ies) to said action at the facsimile number  
(s) shown above.

20 ( ) **PERSONAL SERVICE:** By causing a true copy thereof, enclosed in a sealed  
envelope, to be delivered by hand to the addressee(s) shown above

21 **STATE:** I declare under penalty of perjury under the laws of the State of California, that the  
22 above is true and correct.

23 I certify under penalty of perjury that the foregoing is true and correct.

24 Executed on April 3, 2008 Torrance, California

25   
26 L. Corona

MAILING LIST

1

2 State Water Resources Control Board  
3 Office of the Chief Counsel  
4 Attn: Jeannette L. Bashaw, Legal Secretary  
5 P.O. Box 100  
6 Sacramento, CA 95812-0100

5

6 Tracy J. Egoscue  
7 Executive Officer  
8 California Regional Quality Control Board  
9 Los Angeles Region  
10 320 W. 4<sup>th</sup> Street, Suite 200  
11 Los Angeles, CA 90013

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**EXHIBIT A**



# 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

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. LeRoy Jackson  
City Manager  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90503-5059

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383  
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.  
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID  
4B190215001)**

Dear Mr. Jackson:

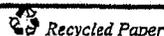
The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination 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 Torrance is a Permittee.

### BACKGROUND

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 municipal separate storm sewer system (MS4) that cause or contribute to exceedances of the bacteria RWLs.

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.

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Exhibit A-1

These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

As documented in the enclosed Notice of Violation, technical staff of the Regional Board has concluded that Torrance 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 two shoreline monitoring sites located along Santa Monica Bay beaches to which the City of Torrance discharges via the MS4, on 7 days, which included 11 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are detailed in the enclosed Notice of Violation. The City of Torrance is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

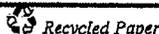
#### **REQUIREMENT TO PROVIDE INFORMATION**

California Water Code § 13383 provides the Regional Board the authority to require a Permittee to monitor and report and provide other information, under penalty of perjury, that the Regional Board requires. Pursuant to CWC § 13383, the City of Torrance is hereby ordered to submit the information required in this Order by April 21, 2008. Furthermore, pursuant to CWC § 13385, failure to comply with any requirements established pursuant to CWC § 13383 may result in the imposition of administrative civil liability penalties by the Regional Board of up to \$10,000 for each day in which the violation occurs after the April 21, 2008 due date. (CWC § 13385(a)(3).)

Pursuant to CWC § 13383, the Regional Board directs the City of Torrance to provide information evaluating and documenting (i) the causes of the violations, (ii) remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit and those taken since, and (iii) the City's plans for additional corrective and preventative actions to bring MS4 discharges into compliance with the bacteria RWLs applicable to the Santa Monica Bay for the upcoming summer dry weather period, beginning on April 1, 2008.

Specifically, the City of Torrance is required to submit reports providing the following information for each of the shoreline monitoring sites, for which it is jointly responsible, where violations have been documented. The reports shall be signed by an authorized signatory for the City of Torrance, under penalty of perjury. The reports shall provide:

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1. The source(s) of the violations for each shoreline compliance location, including an evaluation of dry weather discharges from the MS4 at each noncompliant shoreline location on the date(s) of the violations. The evaluation shall include, where available:
  - a. Details regarding dry weather discharge from the MS4 to each noncompliant shoreline location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
  - b. Details regarding existing treatment of summer dry weather discharge from the MS4 at each noncompliant shoreline location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
  - c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.
2. A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit (i.e., before September 14, 2006) and those remedial actions taken since, and the results thereof.
3. A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.

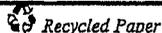
In addition, should the City of Torrance contend that it is not responsible for one or more of the violations, Torrance shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline monitoring site is not the result of discharge from the MS4 but from some other sources or discharges;
2. Evidence that Torrance does not discharge dry weather flow into the Santa Monica Bay at the shoreline monitoring site; and
3. Evidence that Torrance's summer dry weather discharges into the Santa Monica Bay are treated to a level that does not exceed either the single sample or geometric mean bacteria RWLs.

#### **CIVIL LIABILITY**

Pursuant to CWC § 13385(a)(3), the City of Torrance is subject to penalties of up to \$10,000 for any violation of the requirements set forth in this Order. These civil liabilities may be assessed by the Regional Board beginning with the date on which a violation of this Order 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 Torrance may also be subject to penalties pursuant to other sections, and other forms of

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Mr. LeRoy Jackson

- 4 -

March 4, 2008

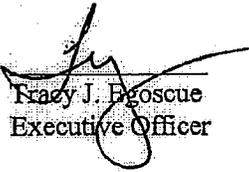
enforcement proceedings, in addition to those described above, if compliance does not timely occur.

**RIGHT TO PETITION**

Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of this Order with the State Water Resources Control Board (SWRCB). The petition must be sent to the SWRCB, P.O. Box 100, Sacramento, CA 95812.

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

Enclosure: Notice of Violation, dated March 4, 2008

cc: Mr. John Dettle, Project Manager, Torrance  
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**

 Recycled Paper

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Exhibit A-4