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11 OF REDONDO BEACH

12 STATE OF CALIFORNIA

13 STATE WATER RESOURCES CONTROL BOARD

14 In the Matter of the Petition of )  
15 ) **PETITION FOR REVIEW AND REQUEST**  
16 ) **FOR ABEYANCE**  
17 CITY OF REDONDO BEACH FOR )  
18 REVIEW OF CALIFORNIA REGIONAL ) [Water Code § 13320(a); 23 CCR §§ 2050,  
19 WATER QUALITY BOARD, LOS ) 2050.5]  
20 ANGELES REGION, ORDER PURSUANT )  
21 TO WATER CODE SECTION 13383 )

22 **INTRODUCTION**

23 Petitioner City of Redondo Beach (the "City" or "Petitioner") respectfully petitions the  
24 State Water Resources Control Board ("State Board") to review the attached Order ("Order") of  
25 the Executive Officer of the California Regional Water Quality Control Board, Los Angeles  
26 Region ("Regional Board"). Petitioner also requests this appeal be held in abeyance pursuant to  
27 Title 23 of the California Code of Regulations, section 2050.5(d) while Petitioner attempts to  
28 resolve the dispute with the Regional Board.

1. **Name and Address of the Petitioner:**

City of Redondo Beach  
Attn. Bill Workman, City Manager  
415 Diamond Street  
Redondo Beach, CA 90277

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1       **2.     The Specific Action of the Regional Board That Petitioner Requests the State Board**  
2       **to Review:**

3             Petitioner requests review of the March 4, 2008, Notice of Violation and Order issued  
4 Pursuant to Water Code section 13383 Regarding Order No. 01-182 as amended by Order No.  
5 R4-2006-0074 and Order No. R4-2007-0042 NPDES Permit No. CAS004001, WDID  
6 4B190143002 issued by Regional Board to the City. Copies of the Notice of Violation (“NOV”)  
7 and the Order is attached as Exhibits “A” and "B, " respectively.<sup>1</sup>

8       **3.     The Notice of Violation and Order Were Issued on March 4, 2008.**

9       **4.     The Reasons the Action Was Inappropriate or Improper:**

10            The Executive Officer's action in issuing the Order was improper because, among other  
11 things, the Order: (1) improperly seeks information based on alleged violations of receiving water  
12 limitations that, with respect to stormwater and urban runoff discharges, were improperly  
13 established in the Regional Water Quality Control Plan ("Basin Plan") for the Los Angeles Region  
14 and incorporated into the Los Angeles County Municipal Separate Storm water System Permit  
15 ("LA MS4 Permit" or “NPDES Permit”); (2) violates the LA MS4 Permit's procedures for  
16 responding to alleged exceedances of bacteria water quality standards; (3) seeks information  
17 regarding alleged violation of receiving water limitations established by the Santa Monica Bay  
18 Bacteria (“SMBBB”) Dry Weather Total Maximum Daily Loads ("TMDL") program improperly  
19 incorporated into the LA MS4 Permit; (4) improperly employs Water Code section 13383 as  
20 authority to seek such information; (5) seeks information that was not "reasonably required"  
21 pursuant to that statute to the extent that the Executive Officer was authorized under to seek

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23  
24            <sup>1</sup> Counsel for the State Board and the Board’s Enforcement Policy have indicated  
25 that Notices of Violation are an informal action by the Regional Board and are generally  
26 not subject to review by the State Board under Water Code section 13320. To the extent  
27 that section 13383 Orders are based on violations alleged in the corresponding NOV  
28 mailed to the Petitioner on March 4, 2008, this Petition raises substantive challenges to  
the NOV as well. Further, Water Code section 13320 states “any aggrieved person may  
petition the state board to review” “any action or failure to act by the regional board.”  
The NOV clearly constitutes an action from the regional Board in that it is signed by the  
Board’s Executive Officer .

1 information under Water Code section 13383; (6) seeks information regarding the quality of  
2 waters not impacted by LA MS4 discharges and not in the LA MS4 system; (7) seeks information  
3 requiring extensive monitoring and investigation, in contravention of the monitoring program  
4 established under the LA MS4 Permit and amending such program without a hearing, in violation  
5 of the Porter-Cologne Act; (8) seeks information regarding alleged exceedances of water quality  
6 standards and objectives as to which individual Petitioners have no responsibility; (9) is based on  
7 an NOV that does not show violations of Water Code section 13376 because the Executive  
8 Officer incorrectly calculates the geometric mean, incorrectly calculates the number of violations,  
9 and improperly utilizes monitoring data that was not to be used for determining compliance with  
10 the TMDL prior to August 7, 2007; (10) does not properly prove violation of Water Code section  
11 11376 in the NOV because the Executive Officer incorrectly modified the LA MS4 Permit  
12 Monitoring and Reporting Program CI 6948, which resulted in the improper use of the monitoring  
13 data in determining compliance with the TMDL; and (11) is not based on properly assessed waste  
14 load allocations of the reference system using current monitoring results compiled since the  
15 monitoring station of the reference system was moved to the wave wash (directly in line with LA  
16 MS4 discharges) versus fifty or more yards away as was the case when the existing waste load  
17 allocations were approved.

18 **5. The Manner in Which Petitioner Is Aggrieved:**

19 Petitioner is aggrieved by the NOV and Order because they are based on incorrect  
20 allegations of violation of the NPDES permit and because compliance will result in an excessive  
21 and unnecessary financial burden on Petitioner.

22 **6. Action Requested:**

23 Petitioner requests the State Board direct the Order be rescinded. Petitioner further  
24 requests this Petition be held in abeyance pursuant to Title 23 of the California Code of  
25 Regulations, section 2050.5(d), and reserves the right to request review.

26 **7. Points and Authorities in Support of Legal Issues Raised in this Petition:**

27 The following is a statement of points and authorities to support the legal issues raised in  
28 this Petition. Petitioner is requesting that this Petition be held in abeyance while the parties

1 attempt to resolve these issues with the Regional Board. The City reserves the right to supplement  
2 this statement of points and authorities in the event the Executive Officer or Regional Board take  
3 further action (or inaction) which necessitate the City requesting the State Board to convert this  
4 Petition to active status. Petitioner further reserves the right to incorporate herein any other  
5 applicable contentions as alleged by additional petitioners contesting the March 4, 2008, NOV's  
6 and Orders issued by the Regional Board in conjunction with the TMDLs adopted as part of the  
7 Basin Plan.

8 **A. THE NOV AND ORDER ARE UNENFORCEABLE AS THEY ARE BASED**  
9 **ON BACTERIA TMDLS THAT WERE DEVELOPED TO IMPLEMENT**  
10 **INAPPLICABLE WATER QUALITY STANDARDS**

11 The bases for the Notice of Violation ("NOV") and imposition of the section 13383 Order  
12 are alleged violations of waste discharge limits for the Santa Monica Bay set forth in the LA MS4  
13 (also referred to as Board Order No. 01-182, as amended by Order No. R4-2006-0074 and Order  
14 No. R4-2007-0042). The waste discharge limits are also set forth in the Basin Plan, as adopted by  
15 the Regional Board on January 24, 2002, and commonly referred to as the Santa Monica Bay  
16 Beaches Bacteria TMDLs. The relevant portions of the LA MS4 Permit relied upon for the  
17 issuance of the NOV's and section 13383 Orders were added through amendments adopted in  
18 September of 2006 and in August of 2007, so as "to implement the summer dry weather waste  
19 load allocations established in the SMBBB Dry Weather TMDL ("SMBBB TMDL") and the  
20 Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL" (collectively, "Bacteria  
21 TMDLs").

22 The Bacteria TMDLs were adopted to implement specific water quality standards set forth  
23 in the Water Quality Control Plan for the Los Angeles Region ("Basin Plan"). By law, however,  
24 such water quality standards were required to have been adopted only after an analysis of the  
25 various factors and considerations set forth under California Water Code sections 13000 and  
26 13241 had been completed. For example, Water Code Section 13000 requires the regulation of  
27 the State's waters "to attain the highest water quality which is reasonable, considering all demands  
28 being made and to be made on those waters and the total values involved, beneficial and  
detrimental, economic and social, tangible and intangible." Water Code § 13000.

1 Further, Water Code section 13241 requires the establishment of water quality objectives  
2 so as to ensure the "reasonable protection of beneficial uses," based on whether the desired water  
3 quality conditions "could reasonably be achieved," along with a consideration of the "economic"  
4 impacts of the water quality standards on the dischargers in question, as well as a consideration of  
5 various other factors, such as the impacts on housing within the region. (See Water Code §§  
6 13241, 13241(a)-(f); see also *City of Burbank v. State Water Res. Control Bd.*, 35 Cal. 4th 613  
7 (2005) (holding Water Code section 13241 requires a consideration of the "discharger's cost of  
8 compliance").

9 With respect to the water quality standards in the Basin Plan which were used to develop  
10 the Bacteria TMDLs (with the TMDLs then forming the bases for the amendments to the LA MS4  
11 Permit), regarding "storm water" (including urban and dry weather runoff, see Title 40 of the Code  
12 of Federal Regulations, Part 122.26(b)(13)), such water quality standards have to date not been  
13 developed based on a consideration of the factors included in Water Code sections 13241 and  
14 13000. Importantly, neither the State Board or the Regional Board has not previously considered  
15 the factors listed in Water Code sections 13241 and 13000 in applying the Basin Plan standards to  
16 storm water. Thus, because the alleged water quality standards violations included in the NOV  
17 and the section 13383 Order were issued on standards that are inapplicable to storm water, the  
18 NOV and the section 13383 Order were wrongly issued.

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

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

23 **1. The Orders Exceed the Statutory Scope of Water Code Section 13383**

24 The Regional Board's Orders are improper because the requirements set forth therein go  
25 well beyond the scope of monitoring requirements permitted under Water Code section 13383.

26 The relevant portions of Water Code section 13383 state:

27 (a) The state board or a regional board may establish monitoring, inspection, entry,  
28 reporting, and recordkeeping requirements. . . for any person who discharges, or  
proposes to discharge, to navigable waters. . . .

(b) The state board or the regional boards may require any person subject to this  
section to establish and maintain monitoring equipment or methods, including,

1 where appropriate, biological monitoring methods, sample effluent as prescribed,  
2 and provide other information as may be reasonably required.

3 Water Code § 13383 (emphasis added).

4 The Order requires Petitioner provide detailed information concerning the alleged  
5 exceedances by April 21, 2008, including (1.a) an evaluation of dry weather discharges from  
6 Petitioners' municipal Storm water system "at each noncompliant shoreline and harbor location on  
7 the date(s) of the violations[;]" (1.b) a detailed description of the "existing treatment of summer  
8 dry weather discharge from the MS4 at each noncompliant shoreline location and any upstream  
9 treatment[;]" (1.c) the "results of any source investigation(s) of the watershed," (2) "[a] detailed  
10 description of remedial actions taken prior to incorporation of the TMDL ... and those remedial  
11 actions taken since, and the results thereof[;]" and (3) "a detailed description of additional  
12 corrective and preventative actions" regarding dry weather discharges "to prevent future  
13 violations[;]" plus a time schedule "designed to achieve full compliance[.]"

14 Additionally, if Petitioner is of the reasonable opinion that it should not be held liable for  
15 violations arising upstream, Petitioner must submit the following, as applicable: (1) "[e]videnece  
16 that the RWL violation(s) [are] from some other source[;]" (2) "[e]vidence that Redondo Beach  
17 does not discharge dry weather flow...[;]" and (3) "[e]vidence that Redondo Beach's summer dry  
18 weather discharges ... do not exceed ... bacterial RWLs."

19 This goes far beyond a requirement that a permittee "monitor" the effluent from its own  
20 storm drains. It apparently requires a complete hydrogeologic model and causation theory of  
21 particles found in the ocean. The Order is unwarranted. Water Code section 13383 is clearly  
22 designed to provide a mechanism whereby the Regional Board can obtain "monitoring, inspection  
23 or entry" information regarding a permittee's discharges. The purpose of such reports is to enable  
24 the Regional Board to make a reasonable characterization of the reporting entity's discharge. The  
25 Order, however, is not being utilized for that purpose.

26 Instead of asking for additional "monitoring" of a permittee's discharges into a waterway  
27 that ultimately flows into the Pacific Ocean, the Order require an "evaluation" of "sources,"  
28 including those "within proximity" of the shoreline. Thus, the Order purports to require each

1 individual petitioner to examine other sources and discharges to prove their own discharges could  
2 not have caused an exceedance in the shoreline monitoring. This type of "evaluation" goes far  
3 beyond monitoring at the point of discharge and exceeds the plain meaning of section 13383.

## 4                   2.       **The Order Is Unreasonable**

5           To the extent the Regional Board Order requires Petitioner to compile information beyond  
6 the jurisdictional control, they are unauthorized. Although Water Code section 13383(b) permits  
7 the Regional Board to request "other information", such requests can only be "reasonably"  
8 imposed. Water Code § 13383(b) ("[t]he state board or regional boards may require any person  
9 subject to this section to. . . provide other information as may be reasonably required") (emphasis  
10 added). Any reports are also limited in scope by Water Code section 13225©, which states that:  
11 "[T]he burden, including costs, of such reports shall bear a reasonable relationship to the need for  
12 the report and the benefits to be obtained therefrom."

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

21           Furthermore, the language in the Order is patently unfair in that it improperly places the  
22 burden on Petitioner to prove the negative (i.e., that Petitioner could not have contributed to the  
23 alleged discharge violations) without first proving Petitioner actually caused the shoreline  
24 contamination. The Regional Board has not met its initial burden. It has not shown that the  
25 shoreline bacteria exceedances came from any particular water body, much less that Petitioner  
26 caused such an exceedance. There is no evidence whatsoever that Petitioner's discharges were in  
27 any way related to the high bacteria flow. Petitioner should not be required to prove they did not  
28 do something when the Regional Board has not raised even a rebuttable presumption that the

1 contamination results from its actions. *See* Evid. Code § 500; *Sargent Fletcher, Inc. v. Able*  
2 *Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

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

6 **C. THE ORDER'S REQUIREMENTS CONSTITUTE UNFUNDED STATE**  
7 **MANDATES**

8 Because the Orders place an improper burden on petitioners to inspect areas beyond their  
9 jurisdictional control, they constitute an unfunded state mandate. Article XIII B, Section 6 of the  
10 Constitution prevents the state from shifting the cost of government from itself to local agencies  
11 without providing a "subvention of funds to reimburse that local government for the costs of the  
12 program or increased level of service . . . ." State agencies are not free to shift state costs to local  
13 agencies without providing funding merely because those costs were imposed upon the state by  
14 the federal government. If the state freely chooses to impose costs upon a local agency as a means  
15 of implementing a federal program, then those costs should be reimbursed by the state agency.  
16 *See County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898 (2007);  
17 *Hayes v. Commission on State Mandates*, 11 Cal. App. 4th 1564, 1593-94 (1992). If the state  
18 refuses to appropriate money to reimburse a city, the enforcement of the state mandate can  
19 potentially be enjoined by a court. *See Lucia Mar Unified School District v. Honig*, 44 Cal. 3d  
20 830, 833-34 (1988). Furthermore, this issue must first go through the California Commission on  
21 State Mandates. Accordingly, prior to complying with the Regional Board's requests, the state  
22 must provide Petitioners with the appropriate funding. Because such funding is not being  
23 provided, the requirements are improper and should be removed from the Order.

23 **D. INCORRECT CALCULATION OF GEOMETRIC MEAN FOR ALLEGED**  
24 **VIOLATIONS OF THE BACTERIA TMDL**

25 The Executive Officer and technical staff to the Regional Board used a method to calculate  
26 the geometric mean that conflicts with the method approved by the Regional Board for the  
27 SMBBB TMDL and may result in higher geometric mean values than the data actually shows.  
28 The geometric mean calculations were used to allege violations of Water Code section 13376 in  
the NOV and used as authorization for imposing the section 13383 Order, issued together on

1 March 4, 2008. Hence, the alleged violations have been inaccurately calculated and the Regional  
2 Board has not properly proved the violations of Water Code section 13376. As such, the Regional  
3 Board is not authorized to impose liability under Water Code section 13385 or establish a  
4 monitoring, inspection, entry, reporting, or recordkeeping requirement under Water Code section  
5 13383.

6 In the NOV and corresponding Order, the Regional Board alleges the City has violated the  
7 waste discharge limits for the Santa Monica Bay established by the LA MS4 Permit. The waste  
8 discharge limits are also set forth in the Basin Plan (i.e., the SMBBB TMDL). The Bacteria  
9 TMDLs were incorporated into the LA MS4 Permit on September 14, 2006, by Order  
10 R4-2006-0074.

11 Under the SMBBB TMDLs, the responsible agencies were required to submit a  
12 Coordinated Shoreline Monitoring Plan ("Monitoring Plan") to the Regional Board for approval  
13 in late 2003. The Monitoring Plan identifies all monitoring locations, the types of monitoring and  
14 the frequency of monitoring to be conducted by the responsible agencies at each site. The  
15 Regional Board approved the Monitoring Plan on April 28, 2004. The monitoring data collected  
16 under the Monitoring Plan is compiled monthly and submitted to the Regional Board. The  
17 Regional Board relied on this coordinated shoreline monitoring data to support its allegations in  
18 the NOV and corresponding Order; however, the method used to calculate the geometric mean  
19 conflicts with the method that was approved by the Regional Board under the Monitoring Plan  
20 and may result in artificially inflated results. The Monitoring Plan illustrates specifically how the  
21 geometric mean is to be calculated.

22 The geometric mean is defined in Webster's Dictionary as "the nth root of the product of n  
23 numbers." Thus, the 30-day geometric mean calculation for the SMBBB TMDLs will be  
24 calculated as the 30th root of the product of 30 numbers (the most recent 30 day results). For  
25 weekly sampling, the 30 numbers are obtained by assigning the weekly test result to the remaining  
26 days of the week. If more samples are tested within the same week, each test result will supersede  
27 the previous result and be assigned to the remaining days of the week until the next sample is  
28 collected. This rolling 30-day geometric mean must be calculated for each day, regardless of

1 whether a weekly or daily schedule is selected. *See* Sec. 2.2.1 Rolling 30-day Geometric Mean  
2 Limits, Santa Monica Bay Beaches Bacterial TMDL Coordinated Shoreline Monitoring Plan.

3 In other words, the calculation of the geometric mean for each day should use 30 values,  
4 which requires extrapolation of the result of a given day sample to subsequent unsampled days in  
5 order to calculate values for each of the past 30 days before running the calculation. Regional  
6 Board staff has reported that the method used to calculate the rolling 30-day geometric mean in  
7 the NOV used only actual summer dry weather data; staff did not extrapolate data by filling in  
8 dates with no monitoring data with the most recent data result, as required under the Plan.  
9 Additionally, wet weather data was not used in calculating the geometric means and when the data  
10 values were qualified with a "<" or ">," the exact numeric value was used without a qualifier.  
11 Staff has admitted that while the method outlined in the Plan was approved based on previous  
12 discussions with various Regional Board departments and the United States Environmental  
13 Protection Agency, Regional Board staff has since re-evaluated this approach and unilaterally  
14 found it to be inappropriate.

15 Furthermore, The method used in NOV to calculate the enterococcus geometric mean  
16 utilizes a value of 10 mpn/100ml when the recorded result indicates the presence of less than 10  
17 mpn/100ml. This "rounding" causes the calculated geometric mean to be higher than the true  
18 value. This conclusion is supported by an evaluation of actual results from 2,135 samples taken at  
19 SMBBB TMDL monitoring stations with values less than 10 mpn/100ml. The samples were  
20 analyzed for enterococcus using an analytical method which had a detection limit of 1 mpn/100ml.  
21 The values in this data set varied from 1 mpn/100 ml to 9 mpn/100 ml with a geometric mean of  
22 2.1 mpn/100ml and a standard deviation of 1.0 mpn. Using normal distribution theory for the log  
23 of each result, 90% of all values would be less than 3.7 mpn/100ml. Because this particular  
24 sampling protocol skews the data to an unacceptable degree, it is faulty and should not be  
25 reasonably relied upon by the Regional Board.

26 This method can result in higher geometric mean values than the data shows and these  
27 artificially inflated mean values cannot be used to support allegations of bacteria exceedance.  
28 Finding No. 36 of LA MS4 Permit, states, "[c]ompliance with the Receiving Water Limitations

1 shall be determined using monitoring data obtained in conformance with the Santa Monica Bay  
2 Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004; the  
3 Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated  
4 Monitoring Plan dated April 13, 2007; and the Monitoring and Reporting Program CI 6948."  
5 Compliance with the waste discharge requirements has not been determined in conformance with  
6 the Monitoring Plan; hence, the alleged violations have been incorrectly calculated and the  
7 Regional Board has not properly proved a violation of Water Code section 13376. As such, the  
8 Regional Board is not authorized to impose liability under Water Code section 13385 or establish  
9 a monitoring, inspection, entry, reporting, or recordkeeping requirement under Water Code section  
10 13383.

11 **E. INCORRECT CALCULATION OF NUMBER OF VIOLATIONS AND**  
12 **IMPROPER RELIANCE ON MONITORING DATA**

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

23 The NOV also incorrectly utilizes additional monitoring data for determining compliance  
24 with the TMDL that was not to be used before the LA MS4 Permit was amended on August 9,  
25 2007. The first amendment of the NPDES Permit added the SMBBB TMDL provisions along  
26 with the requirement that RWLs compliance was to be determined by the Monitoring Plan. This  
27 amendment was approved on September 14, 2006. The second amendment of the NPDES Permit  
28 added the Marina del Rey TMDL provision along with the requirement that compliance was to be  
determined by both the Monitoring Plan and the NPDES Shoreline Monitoring Plan ("NPDES

1 SMP”).

2 The second amendment required monitoring data collected through the Monitoring and  
3 Reporting Program CI 6948 of the LA MS4 Permit, and would also be used to assess compliance  
4 with the RWLs. Accordingly, under CI 6948, additional monitoring on four other days of the  
5 week (Tuesday through Thursday) is conducted at various monitoring sites throughout the  
6 jurisdictional groups. The second amendment was approved on August 9, 2007. Therefore, only  
7 data collected as part of the NPDES SMP, that is, after August 9, 2007, should be used for  
8 determining NPDES permit compliance. Because the NOV and Order rely on data beyond that  
9 collected pursuant to the NPDES SMP, the NOV and Order should be retracted so the offending  
10 sections may be stricken.

11 As specified in Table 7-4.3 of Attachment A to Resolution No. 02-004 for dry weather, the  
12 responsible jurisdictions and agencies were to select between daily and weekly shoreline sampling  
13 when preparing the Monitoring Plan. Accordingly, under section 4.1 Sampling Schedule, the  
14 Monitoring Plan states “[t]he proposed compliance monitoring program comprises 67 sites  
15 monitored on a weekly basis. All routine samples will be collected on Mondays, and accelerated  
16 samples collected on Wednesdays and Fridays.” Accelerated sampling is triggered at a monitoring  
17 location whenever analysis of a Monday sample indicates that an exceedance of a single sample  
18 bacteria has occurred. Weekly sampling resumes for that location once the accelerated sample  
19 results demonstrate that bacteria levels no longer exceed the limits. The Monday data set, along  
20 with any required accelerated sampling, would be utilized in determining compliance with the  
21 TMDL as referenced in Finding E. 32 and in footnote 5 of the Receiving Waters Limitation  
22 Provision of the LA MS4 Permit at the time the permit was reopened on September 14, 2006.

23 **F. RESPONSE TO THE ORDER AND NOV SHOULD BE POSTPONED**  
24 **PENDING THE RESULTS OF THE TMDL REOPENER**

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

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

9 As to the monitoring sites in the Northern part of the Santa Monica Bay, the Regional  
10 Board stated "Northern Bay beach monitoring sites are fewer in number and provide less  
11 comprehensive data than the extensive shoreline monitoring network elsewhere in Santa Monica  
12 Bay." (Regional Board Resolution No. 2002-022, 23, p. 4). Thus, even while adopting the  
13 TMDL, the Regional Board acknowledged that potential flaws existed with respect to the  
14 significance of the data received. To address these deficiencies, the Regional Board inserted a  
15 reopener requirement into the TMDL that would to force the Regional Board to address and  
16 re-evaluate:

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

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

25 In preparation for the Regional Board's pending reopener, various responsible agencies  
26 have been collecting data in order to document and characterize the existing conditions and  
27 sources of bacteria contained in the Santa Monica Bay. In many cases, that information directly  
28 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. Petitioner is  
compiling that data in order to assist the Regional Board at the time of the reopener.

It is inappropriate for the Regional Board to issue Orders and NOV's based on the current,

1 inaccurate TMDL parameters. Instead, the Regional Board should address these alleged violations  
2 only after it has conducted its reopener, re-evaluated its current TMDL, and devised an accurate  
3 regulatory mechanism that takes into account all current information regarding beach conditions.  
4 Petitioners request that the State Board set aside the Order and NOV.

5 **G. THE WASTE LOAD ALLOCATIONS RELIED ON IN THE NOV AND**  
6 **ORDER ARE IMPROPER AS APPLIED**

7 The NOV and Order are also improper because they apply standards created for wash  
8 water testing to the results of sampling done much closer to a discharge point. The summer dry  
9 weather waste load allocation of zero exceedance days was established in part using a Reference  
10 System (i.e., Leo Carrillo Beach). The Reference System includes a fresh water discharge from a  
11 watershed with no human influence (natural conditions). Samples were collected at the Reference  
12 System at a location 50 yards away from the discharge point between 1996 and 2001. The  
13 analysis of this data showed no exceedance of bacteria objectives during the summer dry weather  
14 period. Therefore, the Summer-Dry Weather waste load allocation for all monitoring stations was  
15 set at zero exceedance days.

16 The implementation of the Monitoring Plan, which began November 1, 2004, did not  
17 proscribe sampling be done in the wash water as it had been at the Reference System. Instead, the  
18 Monitoring Plan places the sampling point directly in line with the discharge. Weekly monitoring  
19 data collected by the Los Angeles County Department of Health Services at the Reference System,  
20 during the summer dry weather periods between November 1, 2004 and October 31, 2007,  
21 exceeded bacteria objectives on 18 days. Over this period 136 Summer Dry Weather samples  
22 were collected, which represents an exceedance rate of 13%. Thus, even the Reference System  
23 cannot meet the standards as Regional Board is attempting to apply them. It is unreasonable to  
24 use standards generated for one type of location as the basis for the issuance of an NOV regarding  
25 dissimilar locations. Because the zero exceedance day standard is patently inappropriate for  
26 sampling done near a discharge point (the proscribed location, as is at issue herein), the NOV and  
27 Order are irreconcilably flawed and should be set aside.

28 ///

///

1           **H.     REGIONAL BOARD FAILED FOLLOW NOTICE AND HEARING**  
2           **REQUIREMENTS IN AMENDING PERMITS AFFECTING CITY**

3           **1.     The NPDES SMP Was Adopted Without Proper Notice**

4           Water Code section 13244 states “The regional boards shall not adopt any water quality  
5 control plan unless a public hearing is first held, after the giving of notice of such hearing by  
6 publication in the affected county or counties[.]” The LA MS4 Permit has been amended twice to  
7 add Bacteria TMDLs provisions. On September 14, 2006 (Order No. R4-2006-0074) it was  
8 modified to add the provisions of the SMBBB TMDL. On August 9, 2007 (Order No.  
9 R4-2007-0042) it was modified to add the provisions of the Marina del Rey Bacteria TMDL.  
10 One addition to the LA MS4 Permit arising on August 9, 2007, was a footnote (Footnote 5, page  
11 21) that defined how compliance with the RWLs is to be determined. In Order No.  
12 R4-2006-0074, the footnote specified the Monitoring Plan would be used to determine  
13 compliance. However, Order No. R4-2006-0042 (re: Marina del Ray) changed this footnote to  
14 specify that both the Monitoring Plan and the NPDES SMP would be used to determine  
15 compliance.

16           The permit amendment that added the Marina del Rey TMDL was noticed and responded  
17 to with the understanding that the changes to the NPDES permit would only affect the agencies  
18 regulated under the Marina del Rey TMDL. However, because Footnote 5 was modified to  
19 include the NPDES SMP as a method of determining compliance, it affects all entities responsible  
20 for drainage to the monitoring stations being monitored as part of this monitoring program.  
21 Therefore, the City, as one of the affected entities, was effectively denied its right to provide  
22 comment. Ergo, the NOV and Order should be set aside, as they were issued pursuant to a permit  
23 that was improperly amended.

24           **2.     Modification of a WDR Requires Prior Notice and Hearing**

25           The LA MS4 Permit, which is alleged in the NOV and in the Order to have been violated by  
26 Petitioner, contains a detailed monitoring program. By requiring Petitioner submit detailed reports  
27 not required in the monitoring program under the LA MS4 Permit, including the provision of  
28 exculpatory evidence and the investigation of non-MS4 discharges, the Order modifies and amend

1 the monitoring program set forth in the LA MS4 Permit without notice or hearing, in violation of the  
2 Porter-Cologne Water Quality Act.

3 The MS4 Permit is both a NPDES permit and Waste Discharge Requirement (“WDR”) issued  
4 by the Regional Board under the Porter-Cologne Act. *See* Water Code §§ 13370-13389. A WDR  
5 cannot be issued except through prior notice and hearing. Water Code § 13378. The Act further  
6 provides that only a *Regional Board* can modify a WDR, and that this function *cannot* be delegated  
7 to the executive officer. Water Code § 13223(a) (“Each regional board may delegate any of its  
8 powers and duties vested in it by [the Porter-Cologne Act] excepting only the following: . . . (2) the  
9 issuance, *modification*, or revocation of any water quality control plan, water quality objectives, or  
10 *waste discharge requirement*.”) (emphasis added). Regional Board cannot avoid the duty to provide  
11 notice and hearing prior to the modification of a WDRs, the Order is both outside of the Executive  
12 Officer’s authority, and it fails to meet the Water Code’s notice and hearing requirements.

13 **3. In Issuing the Order and the NOV, the Executive Officer Did Not Follow**  
14 **the Procedures Laid Down in the LA MS4 Permit**

15 In amending the LA MS4 Permit to add the SMBBB TMDL and the Marina del Rey TMDL,  
16 the Regional Board relied upon Special Finding No. E.37, setting forth the procedure the Regional  
17 Board would follow if an exceedance at a monitoring location occurred.

18 The Executive Officer did not follow that procedure. No order pursuant to Water Code  
19 section 13267 or section 13225 was issued to Petitioner. The Regional Board Executive Officer made  
20 no attempt to determine, prior to issuing the NOV and Order, whether any permittee was, in fact,  
21 responsible for the alleged exceedances of the bacteria RWLs. The Executive Officer ignored Special  
22 Finding No. E.37 and issued the NOV and Order for exceedances that may actually have no  
23 connection with discharges from the MS4. It is an abuse of discretion for an agency not to follow its  
24 own procedures. *See Env'tl. Protection Info. Center, Inc. v. Johnson*, 170 Cal. App. 3d 604, 630-31  
25 (1985) (failure to comply with own regulations required timber harvesting plan to be set aside).  
26 Petitioner requests the State Board set aside the NOV and Order for the foregoing reason.

26 **I. THE NOV AND ORDER UNLAWFULLY IMPOSE ON PETITIONER**  
27 **RESPONSIBILITY FOR THE DISCHARGES OF OTHERS**

28 The Order is based on the allegation that Petitioner is jointly responsible for the exceedances  
alleged in the NOV. To the contrary, Petitioner is not responsible for the discharges of others, and

1 neither the Clean Water Act or the Porter-Cologne Act so provides. Petitioner is responsible for its  
2 discharges and no others.

3 **J. TECHNICAL DEFECTS**

4 Petitioner has requested that the Petition be placed in abeyance while we attempt to reach an  
5 amicable resolution with the Regional Board. Accordingly, Petitioner is continuing to investigate and  
6 collect data related to the matters raised in the NOV and Order. As of this Petition, Petitioner has  
7 identified the following technical defects:

- 8 • The two compliance monitoring stations sited in the NOV, SMB-6-1 and SMB-6-5,  
9 have low flow diversions installed on the MS4 discharge, both put in place prior to the  
10 alleged violations. The facility is permitted by the Los Angeles County Sanitation  
11 District to discharge to their sanitary sewer system nightly during the summer season.  
12 Since start up, the SMB-6-1 facility has operated without interruption during the  
13 summer season. SMB-6-5 has also been operational on all of the days Regional Board  
14 alleges violations occurred. However, on the days the NOV alleges violations  
15 occurred, no discharge from the LA MS4 was recorded.
- 16 • The NOV and Order are based, in part, on data collected prior to August 9, 2007, prior  
17 to the adoption of the NPDES SMP. There is an inherent impropriety applying new  
18 protocols to samples taken prior to the adoption those protocols.

19 Petitioner anticipates that as the investigation continues, Petitioner may discover discrepancies  
20 or information that may give rise to additional claims. City reserves its right to supplement this  
21 Petition in the event the investigation uncovers additional information relevant to these matters.

22 **8. Statement that the Petition Has Been Sent to the Regional Board Executive Officer:**

23 A copy of this Petition was mailed to the Regional Board Executive Officer, Tracy J. Egoscue,  
24 on April 4, 2008.

25 **9. Statement Regarding Raising Substantive Issues or Objections Before the Regional**  
26 **Board:**

27 The substantive issues and objections raised in this Petition could not have come before the  
28 Regional Board because the Order was issued by the Executive Officer, without prior notice or

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hearing.

**CONCLUSION**

For the foregoing reasons, Petitioner submits that the issuance of the subject NOV and Order was improper, inappropriate, unlawful, and not supported by substantial evidence. Accordingly, Petitioner respectfully requests 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 Title 23 of the California Code of Regulations, section 2050.5(d), Petitioner respectfully requests this Petition be held in abeyance while Petitioner pursues resolution of this matter with the Regional Board.

Dated: April 3, 2008

  
Michael W. Webb,  
Attorney for Petitioner

# **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. CAS0004001, WDID4B190143002)**



# 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. Bill Workman  
City Manager  
City of Redondo Beach  
P.O. Box 270  
Redondo Beach, CA 90277-0270

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 4B190143002)**

Dear Mr. Workman:

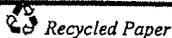
The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination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

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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 Redondo Beach is hereby notified that technical staff has concluded that Redondo 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.

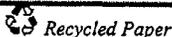
The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at two shoreline monitoring sites located along Santa Monica Bay beaches to which the City of Redondo Beach 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 summarized in Table 1, detailed in the attachments, and incorporated herein by reference. The City of Redondo 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 Redondo 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 Redondo 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 Redondo 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.

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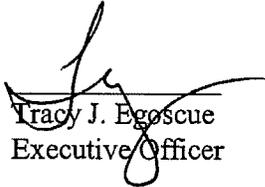
Mr. Bill Workman

- 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 37-38  
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Mr. Mike Shay, Civil Engineer, Redondo 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. Eugene Bromley, U.S. EPA, Region 9

**California Environmental Protection Agency**

 Recycled Paper

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TABLE 1

**REDONDO BEACH**  
**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 6-01	0	2	4	2	0	0	0	8	4
SMB 6-05	1	1	0	1	0	0	0	3	3
<b>Totals</b>	1	3	4	3	0	0	0	11	7

**ATTACHMENTS**

**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 6-01, HERONDO SD**

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
<b>Basin Plan Limit</b>	<b>10000</b>	<b>400</b>	<b>104</b>	<b>1000</b>	<b>1000</b>	<b>200</b>	<b>35</b>
10/31/2006			140				
6/4/2007			146				
10/25/2007		1700	1400	2700			
10/26/2007		1800	480	2600			
<b>Total Violations</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

\* Regional Board staff calculated the rolling 30-day geometric mean values presented.

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 6-05, AVENUE I SD

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
<b>Basin Plan Limit</b>	10000	400	104	1000	1000	200	35
10/30/2006		601					
6/25/2007	24912						
8/13/2007				1240			
<b>Total Violations</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

\* Regional Board staff calculated the rolling 30-day geometric mean values presented.

# **EXHIBIT “B”**

**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. CAS0004001, WDID4B190143002)**



# California Regional Water Quality Control Board

## Los Angeles Region



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Arnold Schwarzenegger  
Governor

March 4, 2008

Mr. Bill Workman  
City Manager  
City of Redondo Beach  
P.O. Box 270  
Redondo Beach, CA 90277-0270

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  
4B190143002)**

Dear Mr. Workman:

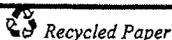
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### BACKGROUND

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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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 Redondo 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 two shoreline monitoring sites located along Santa Monica Bay beaches to which the City of Redondo Beach 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 Redondo 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.

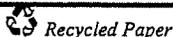
#### **REQUIREMENT TO PROVIDE INFORMATION**

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 Redondo Beach 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 Redondo Beach 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 Redondo Beach 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 Redondo Beach, under penalty of perjury. The reports shall provide:

***California Environmental Protection Agency***



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.

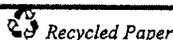
In addition, should the City of Redondo Beach contend that it is not responsible for one or more of the violations, Redondo Beach shall also submit the following information, if applicable:

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 Redondo Beach does not discharge dry weather flow into the Santa Monica Bay at the shoreline monitoring site; and
3. Evidence that Redondo Beach'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 Redondo Beach 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 Redondo Beach may also be subject to penalties pursuant to other sections, and other forms of

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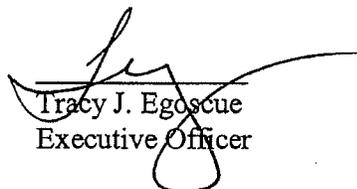
enforcement proceedings, in addition to those described above, if compliance does not timely occur.

**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. Mike Shay, Civil Engineer, Redondo 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. Eugene Bromley, U.S. EPA, Region 9

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County,  
5 California. I am over the age eighteen (18) years and am not a party to the within action. My  
6 business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

6 On April 3, 2008, I caused the foregoing document(s) described as

7 **PETITION FOR REVIEW AND REQUEST FOR ABEYANCE**

8 on the interested parties in this action by placing

- 9  the original
- 9  a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 Tracy J. Egoscue  
 12 Executive Officer  
 12 RWQCB, Los Angeles Region  
 13 320 W. 4<sup>th</sup> St., Suite 200  
 13 Los Angeles, CA 90013  
 14 (213) 576-6640

Jeanette L. Bashaw  
 Legal Secretary  
 State Water Resources Control Board  
 P.O. Box 100  
 Sacramento, CA 95812  
[jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov)

15 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
 16 processing correspondence for mailing. Under the practice it would be deposited with the  
 17 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,  
 18 California, in the ordinary course of business. I am aware that on motion of the party  
 18 served, service is presumed invalid if postal cancellation date is more than one day after  
 18 date of deposit for mailing an affidavit.  
 18 Executed on April 3, 2008, at Long Beach, California.

19 X (VIA E-MAIL TRANSMISSION)  
 19 Executed on April 3, 2008, at Long Beach, California.

20        (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of  
 21 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under  
 22 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for  
 23 receipt on the same day in the ordinary course of business. Such envelope was sealed and  
 23 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for  
 23 in accordance with ordinary business practices.  
 23 Executed on April 3, 2008, at Long Beach, California.

24 X (STATE) I declare under penalty of perjury under the laws of the State of California that  
 25 the foregoing is true and correct.

26        (FEDERAL) I declare that I am employed in the office of the member of the bar of this  
 27 court at whose direction the service was made.

28   
 CHRISTINA SANCHEZ