

Comment Letters Received from Permittees

- City of Agoura Hills
- City of Arcadia
- City of Artesia
- City of Baldwin Park
- City of Bell Gardens
- Best, Best & Krieger LLP
- City of Beverly Hills
- City of Bradbury
- City of Burbank
- City of Calabasas
- City of Carson
- City of Covina
- City of Culver City
- City of Diamond Bar
- City of Downey

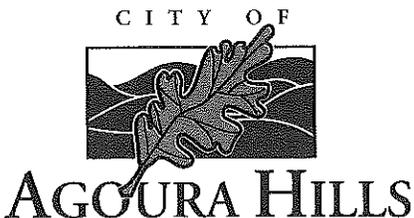
- City of Duarte
- City of El Segundo
- City of Glendora
- City of Hidden Hills
- City of Inglewood
- City of Irwindale
- LA County Flood Control District (LACFCD)
- City of Lakewood
- City of La Mirada
- LA Permit Group
- City of La Verne
- City of Lawndale
- Los Angeles City
- Los Angeles County
- City of Malibu
- City of Monrovia

- City of Monterey Park
- City of Norwalk
- Peninsula Cities Including Rancho Palos Verdes
Rolling Hills Estates, Palos Verdes Estates,
Rolling Hills

- City of Pico Rivera
- City of Pomona
- Richards, Watson, Gershon
- City of Rolling Hills
- Rutan and Tucker
- City of San Dimas
- City of San Gabriel
- City of San Marino
- City of Santa Clarita
- City of Santa Monica
- City of Sierra Madre

- City of Signal Hill
- South Bay Cities Including Redondo Beach, Manhattan Beach, Hermosa Beach, Torrance, El Segundo

- City of South El Monte
- City of South Gate
- City of Temple City
- City of Torrance
- City of Vernon
- City of West Covina
- City of Westlake Village



"Gateway to the Santa Monica Mountains National Recreation Area"

July 20, 2012

VIA FED EX AND E-MAIL (PDF)

Mr. Ivar Ridgeway
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013
LAMS42012@waterboards.ca.gov
rpurdy@waterboards.ca.gov
iridgeway@waterboards.ca.gov

Dear Mr. Ridgeway:

The City of Agoura Hills ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001) ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Agoura Hills, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
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- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See* Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution California also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has removed the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates

subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.*, Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the

requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

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

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

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee’s discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitttees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitttees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitttees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees’ data and fail to consider the economic impact of new, costly aspects of the Permit.

The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128,

1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to “commingled discharges” of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee’s discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee’s actions. *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees’ dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Greg Ramirez,
City Manager for the City of Agoura Hills

cc: Ramiro Adeva, City Engineer
Candice K. Lee, City Attorney



City of Arcadia

Public Works Services Department

Tom Tait
Public Works Services Director

July 23, 2012

Mr. Ivar Ridgeway
Los Angeles Regional Water Quality Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

**RE: COMMENTS ON THE DRAFT NPDES PERMIT FOR MS4 DISCHARGES WITHIN THE
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the Tentative Draft NPDES MS4 Permit for the Los Angeles Region.

The City of Arcadia understands and appreciates the need to develop a NPDES Permit that provide measures to improve and protect water quality in the Los Angeles region; however, the City strongly feels that the Permit implementation activities must be effective, efficient and sustainable. As an active participant of the Los Angeles Permit Group, the City supports the comments separately submitted by the LA Permit Group.

We also request the Board reconsider the request previously made by the City and the Los Angeles Permit Group to extend the comment period from 45 days to 180 days to ensure that City staff has a reasonable opportunity to review the 500-page Permit and both understand and comment on the wide-ranging requirements, liabilities and fiscal impacts on the City. This process already has been years in the making, so extending the comment period will not cause undue prejudice and should result in a better final Permit.

If you have any questions regarding this matter, please contact Vanessa Hevener, Environmental Services Officer at (626) 305-5327.

Sincerely,

Tom Tait
Public Works Services Director



THE CITY OF ARTESIA, CALIFORNIA

18747 CLARKDALE AVENUE, ARTESIA, CALIFORNIA 90701

Telephone 562 / 865-6262

FAX 562 / 865-6240

"Service Builds Tomorrow's Progress"

July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
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iridgeway@waterboards.ca.gov

Dear Mr. Ridgeway:

The City of Artesia ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001 ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

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2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See* Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has removed the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates

subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.,* Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the

requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitee’s discharge. Rather, the Permit requires copermitees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to “commingled discharges” of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee’s discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee’s actions. *See Cal. Evid. Code § 500; Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003):

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees’ dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Justine Menzel
Deputy City Manager
City of Artesia

cc: Maria Dadian, City Manager, City of Artesia
Kevin G. Ennis, esq.



July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Baldwin Park is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me.

Sincerely,



Vijay Singhal
Chief Executive Officer

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL – to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

"Effluent monitoring," according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit's limitations.* It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will

generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond "to" the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

5. **The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.**

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase "prior to mixing of either point or non-point source load of contaminants," which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

- a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA

pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only "to" the MS4 makes this issue academic. A permittee's only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.

- a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an

¹⁰Op. Cit., page 35.

amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is "a" because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring – is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs – though incorrectly defined and established in this instance – represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to "b", see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding "c", as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding "d", this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

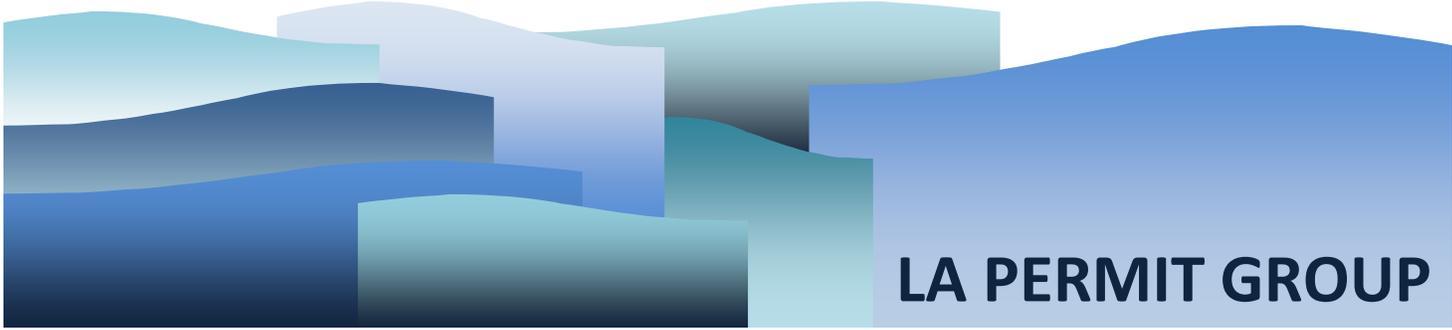
Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies *"to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below)."*

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS



LA PERMIT GROUP

July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, **it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.**

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectfully request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

¹² S. Unger's 7/13/12 letter to H. Maloney and the LA Permit Group.



City of BELL GARDENS

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July 23, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment Letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

The City of Bell Gardens would like to take this opportunity to inform the Regional Board of our support of the attached comment letter from the LA Permit Group. The City of Bell Gardens has been actively participating in the LA Permit Group since it was formed in 2007. We are extremely proud of the efforts that the group has put in so far with regards to the new Los Angeles MS4 permit and we will continue to support and participate in the group throughout this entire process.

We would also like to inform the Regional Board of our support of the LA Permit Group's request to extend the review period of the draft order. We feel that the time given to review the draft order is not adequate to deliver the proper comments that will help both the MS4 dischargers and the Regional Board produce a permit that will be beneficial to everyone involved. Please take the time to give this request further consideration.

We would like to thank the Regional Board for the time and effort to review this letter and hope that a resolution regarding all these matters can be achieved soon.

Sincerely,

John Oropeza
Assistant City Manager
City of Bell Gardens

Enclosed: LA Permit Group Comment Letter

Agency/Reviewer: LA Permit Group

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements		Same comment
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>		This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.		The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofiting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Document Name: **Watershed Management Program Section Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Document Name: **Attachment E - Monitoring and Reporting Program Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s).”</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year...”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls in the inventory within 5 years...”

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.



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File No. 15341.00319

July 23, 2012

VIA E-MAIL

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: City of Claremont's Comments on Draft Tentative Order

Dear Mr. Ridgeway:

Best Best & Krieger ("BBK") serves as City Attorney for the City of Claremont. BBK submits these written comments on behalf of Claremont regarding the draft Los Angeles MS4 Tentative Order ("Draft Permit"). Claremont is a member of the LA Permit Group and joins in the comments submitted by that organization. Claremont writes separately to address an issue of unique importance to the City.

Final Comments on the Draft Permit

As the Regional Board is aware, the conditions of the Draft Permit, once adopted, will become legally enforceable requirements for Claremont. If there are future legal disputes about the meaning of the conditions, a court will review the Permit as it would review any contract or legal document. For these reasons, Claremont asks that the Regional Board listen closely to all of the concerns expressed by municipal dischargers, who are, in essence, contractual partners with the Regional Board when it comes to the Permit (albeit ones who cannot control the Regional Board's final Permit language). The Regional Board should only include provisions in the Permit that are precise and intended to create enforceable obligations that are well understood by all parties.

Specific Concerns with the Draft Permit

For Claremont, the need for precision and accuracy is particularly important with regard to the manner in which the Draft Permit attempts to address the Middle Santa Ana River Watershed Bacteria Indicator TMDL ("MSAR TMDL"). As Claremont has previously advised the Regional Board, the MSAR TMDL is not one that has been adopted by this Board. Rather, the MSAR TMDL was adopted by the Santa Ana Regional Board. The MSAR TMDL included Claremont, even though the City is not subject to the jurisdiction of that Board.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. Ivar Ridgeway
July 23, 2012
Page 2

In Section E and Attachment R of the Draft Permit, the Regional Board has compounded this error by only incorporating part of the MSAR TMDL as numeric effluent limitations applicable to Claremont. As written, the Draft Permit is thus contrary to the express language and stated intent of the MSAR TMDL, its implementation plan and the policy of the Santa Ana Regional Board. This error places Claremont in the untenable position of having the Los Angeles Regional Board apply a TMDL it did not adopt in a manner inconsistent with the language and stated intent of the Regional Board that did adopt the TMDL. On May 14, 2012, Claremont sent the Regional Board a letter objecting to the inclusion of MSAR TMDL in the Draft Permit. Claremont repeats and incorporates the objections set forth in the May 14, 2012 letter. A copy of the May 14, 2012 letter is attached. Claremont supplements its previous comments as set forth below.

Section E and Attachment R of the Draft Permit seek to establish the terms and conditions under which “applicable” TMDLs are included in the Permit as WQBELs. With regard to the MSAR TMDL, the Regional Board has erroneously included only a part of the TMDL in a manner inconsistent with the law and the facts.

As applied to the MSAR TMDL, Section E and Attachment R of the Draft Permit are actually inconsistent, rather than consistent, with the assumptions and requirements of the MSAR TMDL. Specifically, the Draft Permit only addresses one part of the MSAR TMDL and selectively applies only its numeric portion. It ignores the Santa Ana Regional Board’s express intent to allow dischargers to comply with the TMDL’s WLA through the submission and implementation of Comprehensive Bacterial Reduction Plans. In this way, the Regional Board has erred in its application of the TMDL.

Federal Regulations at 40 C.F.R. § 122.44.(d)(1)(vii)(B) state:

When developing water quality-based effluent limits under this paragraph *the permitting authority shall ensure that . . . Effluent limits* developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, *are consistent with the assumptions and requirements of any available wasteload allocation* for the discharge prepared by the State and approved by EPA.

The MSAR TMDL sets numeric targets for Fecal Coliform and E. Coli bacteria in several of the tributaries to the Santa Ana River. The surface water closest to the City is Chino Creek Reach 2. The MSAR TMDL for Chino Creek Reach 2 is 180 Fecal Coliform organisms per 100 ml of water. Dry weather compliance must be achieved by 2015, and wet weather compliance must be achieved by 2025. In order to achieve these limitations within the allotted time, the



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ATTORNEYS AT LAW

Mr. Ivar Ridgeway
July 23, 2012
Page 3

MSAR TMDL has an implementation plan. The basic requirements of the implementation plan include the following:

- Develop and implement a Watershed-Wide Bacterial Indicator Water Quality Monitoring Program
- Develop and Implement Bacterial Indicator Urban Source Evaluation Plan (“USEP”).
- Develop a Comprehensive Bacteria Reduction Plan (“CBRP”) to address surface waters that exceed the applicable standard, and develop structural and non-structural BMPs to meet compliance by 2015 (for dry weather flows).
- Amend applicable MS4 permits and underlying documents to incorporate bacteria control mechanisms.
- Amend the Santa Ana Basin Plan to use E. Coli in place of Fecal Coliform as the compliance measure for the Rec-1 standard.

The public agencies subject to the MSAR TMDL formed a task force to implement the TMDL (the “TMDL Task Force”). Claremont has been a participating, funding member of the Task Force. The TMDL Task Force developed the USEP in 2007, and it was approved by the Santa Ana Regional Board in 2008. In June, 2011, the Riverside County and San Bernardino County members of the TMDL Task Force developed CBRPs for their respective jurisdictions. They were submitted to the Santa Ana Regional Board in June, 2011, and subsequently approved by the Santa Ana Regional Board.

The CBRPs require the dischargers to monitoring outfalls within their MS4 system, adopt ordinances to limit dry weather flows, and if necessary, construct structural BMPs to reduce bacteria discharges. The plans further state that compliance will be measured in the following ways:

- The water quality objectives are attained in the water bodies listed in the TMDL, and if not, the exceedances are not caused by controllable urban sources.
- Sampling Discharges from selected MS4 outfalls are compliant with dry weather waste load allocations and if not, the exceedances are not caused by controllable urban sources.



BEST BEST & KRIEGER
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Mr. Ivar Ridgeway
July 23, 2012
Page 4

- MS4 facilities are dry during dry weather or the discharger demonstrates that dry weather flows infiltrate before entering an impaired water body.

In approving the MSAR TMDL, the Santa Ana Regional Board expressly found that compliance with the BMP based implementation approach to be outlined in the CBRPs was an effective means of achieving the MSAR TMDL. This has been reiterated by the Santa Ana Regional Board with each subsequent MSAR TMDL related approval, including the approval of the CBRPs in February, 2012.

As noted, Claremont is an active member of the Task Force and has participated in the development of the CBRPs. Claremont intends to develop and implement a CBRP based on those already approved by the Santa Ana Regional Board as a means of achieving compliance with the MSAR TMDL. This is the approach outlined by the Santa Ana Regional Board in the Basin Plan Amendment adopting the MSAR TMDL, and it is the only approach that is *consistent with the assumptions and requirements* of the MSAR TMDL. Any other approach would conflict with the express terms of the TMDL and thereby violate Federal Regulations.

Attachment R of the Draft Permit must therefore be rewritten as follows:

- A. Middle Santa Ana River ("MSAR") Watershed Bacteria Indicator TMDL
 1. The final WQBELs for bacterial indicators under Dry Weather Conditions contained in this section shall be achieved no later than December 31, 2015. These final effluent limits shall be considered effective for enforcement purposes on January 1, 2016.
 2. The Final WQBELs for MSAR Bacterial Indicator TMDL under Dry Weather conditions shall be developed and implemented in the following manner:
 - a. The MSAR Permittees shall prepare for approval by the Santa Ana Regional Water Quality Control Board a Comprehensive Bacteria Reduction Plan (CBRP) describing, in detail, the specific actions that have been taken or will be taken to achieve compliance with the urban wasteload allocation under dry weather conditions (April 1st through October 31st) by December 31, 2015. The CBRP must include:



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ATTORNEYS AT LAW

Mr. Ivar Ridgeway
July 23, 2012
Page 5

- i. The specific ordinance(s) adopted to reduce the concentration of indicator bacteria in urban sources.
 - ii. The specific BMPs implemented to reduce the concentration of indicator bacteria from urban sources and the water quality improvements expected to result from these BMPs.
 - iii. The specific inspection criteria used to identify and manage the urban sources most likely causing exceedances of water quality objectives for indicator bacteria.
 - iv. The specific regional treatment facilities and the locations where such facilities will be built to reduce the concentration of indicator bacteria discharged from urban sources and the expected water quality improvements to result when the facilities are complete.
 - v. The scientific and technical documentation used to conclude that the CBRP, once fully implemented, is expected to achieve compliance with the urban wasteload allocation for indicator bacteria by December 31, 2015.
 - vi. A detailed schedule for implementing the CBRP. The schedule must identify discrete milestones to assess satisfactory progress toward meeting the urban wasteload allocations for dry weather by December 31, 2015. The schedule must also indicate which agency or agencies are responsible for meeting each milestone.
 - vii. The specific metric(s) that will be established to demonstrate the effectiveness of the CBRP and acceptable progress toward meeting the urban waste load allocations for indicator bacteria by December 31, 2015.
- b. The draft CBRP must be submitted to the Santa Ana Regional Water Quality Control Board no later than March 31, 2013. The Permittees may submit the plan individually, jointly or through a collaborative effort with other urban dischargers. The MSAR Permittees must submit the final version of the plan no



BEST BEST & KRIEGER LLP
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Mr. Ivar Ridgeway
July 23, 2012
Page 6

more than 90 days after receiving the comments from Santa Ana Regional Water Quality Control Board staff.

- c. Once approved by the Santa Ana Regional Water Quality Control Board, the CBRP shall be incorporated into this Order as the final WQBELs for indicator bacteria under Dry Weather Conditions. Based on BMP effectiveness analysis, the CBRP shall be updated, if necessary. The updated CBRP shall be implemented upon approval by the Regional Board.
3. In the event this Order is still in effect on December 31, 2025, and the Regional Board has not adopted alternative final water quality-based effluent limits for wet weather conditions by that date, then the urban wasteload allocations specified in the MSAR-TMDL for wet weather conditions (November 1st through March 31st) will automatically become the final numeric water quality-based effluent limits for the MSAR Permittees on January 1, 2026.

Thank you for your attention to this matter. If you have any questions or comments regarding the City's position on the MSAR TMDL and its incorporation into the Draft Permit, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SHAWN HÄGERTY'.

Shawn Hägerty
of BEST BEST & KRIEGER LLP



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May 14, 2012

VIA E-MAIL

Renee Purdy
Section Chief of Regional Programs
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: City of Claremont's Written Comments on Working Proposal for the TMDL Provisions of the Los Angeles County MS4 Permit

Dear Ms. Purdy:

This letter is submitted on behalf of the City of Claremont ("City") in connection with the Los Angeles Regional Board's working proposal for the TMDL provisions of the Los Angeles County MS4 Permit. The focus of the City's written comments is on the manner in which the working proposal seeks to incorporate the Middle Santa Ana River Watershed Bacteria Indicator TMDL ("MSAR TMDL") as an enforceable requirement of the MS4 Permit. The City appreciates the opportunity to submit these written comments and looks forward to working with you to develop a mutually acceptable approach to the MSAR TMDL.

Before providing specific comments on the working proposal, it is important for the Regional Board to understand the City's position regarding the MSAR TMDL. As you know, the MSAR TMDL was adopted by the Santa Ana Regional Board in February of 2005. The City is not located within the jurisdiction of the Santa Ana Regional Board, and, therefore, the Basin Plan adopted by the Santa Ana Regional Board, including the MSAR TMDL, has no application to the City. (See Water Code § 13240 (providing that regional boards "shall formulate and adopt water quality control plans for all areas within the region.") (Emphasis added).)

Because the MSAR TMDL is not applicable to the City, significant legal concerns exist regarding the ability of the Los Angeles Regional Board to include the MSAR TMDL in the MS4 Permit without first going through the legally required Basin Plan amendment process to develop a bacteria TMDL that applies to the City. Since the Los Angeles Regional Board has not so amended its Basin Plan, the Board's legal authority to include the TMDL in the MS4 Permit is suspect. In making these comments, the City does not waive its legal objections to the application of the MSAR TMDL to it.



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Renee Purdy
Section Chief of Regional Board
May 14, 2012
Page 2

Although the City preserves its legal options regarding the MSAR TMDL, the City recognizes that either the Los Angeles or Santa Ana Boards may have the authority, after following all legally required procedures, to extend the MSAR TMDL or similar requirements to the City in a legally enforceable way. For this reason, the City has been participating in the MSAR TMDL Task Force and might be willing to continue to participate in achieving the goals of the MSAR TMDL through the MS4 Permit under acceptable terms and conditions, as expressed in the comments below.

Subject to these caveats, the City has the following three comments on the TMDL provisions of the working proposal related to the MSAR TMDL:

1. The Regional Board should delete the final fecal coliform effluent limitations and receiving water limitations for both dry and wet weather. It is our understanding that the Los Angeles Regional Board's Basin Plan no longer uses fecal coliform as a fresh water Rec-1 objective. Therefore, the Board cannot include such an objective in the MS4 Permit. In addition, as noted in the working proposal, the Santa Ana Board is in the process of replacing the Rec-1 fecal coliform objective with an E. coli objective. Therefore, the final fecal coliform effluent limitations and receiving water limitations should be deleted.
2. The Regional Board should revise the provisions of Section G.1.d of the working proposal to allow the City to use the Comprehensive Bacteria Reduction Plans ("CBRPs") that have already been prepared for the MSAR TMDL and which have already been tentatively approved by staff at the Santa Ana Board. It makes little sense to require the City to "reinvent the wheel" on this issue. For this reason, the City recommends that Section G.1.d of the working proposal be revised to read as follows:

Permittees may demonstrate compliance with the effluent limitations and receiving water limitations by complying with the Comprehensive Bacterial Reduction Plans prepared for the MSAR TMDL.

3. The City would like the proposed Permit language to better reflect how the City's compliance will be measured. This is particularly important to the City because information prepared by the MSAR TMDL Task Force demonstrates that the City does not discharge stormwater or dry weather flows directly to the Chino Basin, including the San Antonio Channel. The City's contribution to flows occurs, if at all, only at the limited points where the City's MS4 connects with the City of Pomona's MS4. For this reason, the City would like to understand (and have the



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Renee Purdy
Section Chief of Regional Board
May 14, 2012
Page 3

permit document) how the City's compliance will be measured. In the City's view, it would be in compliance with the effluent limitations if either (1) compliance existed at the outfall of any MS4 to which the City contributes; or (2) compliance existed at the point at which the City's MS4 connects to the City of Pomona's MS4. If either of these conditions existed, compliance would be obtained. Moreover, the City does not agree with the incorporation of the MSAR TMDL's Waste Load Allocation ("WLA") as a numeric effluent limitations. Particularly as applied to the City, the better approach would be to use a BMP-based approach to achieving compliance with the WLA.

The City appreciates the opportunity to submit these comments. We request the opportunity to discuss them with you and your team by phone or in person.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SHAWN HAGERTY'.

Shawn Hagerty
of BEST BEST & KRIEGER LLP

cc: Tony Ramos, City Manager (via e-mail)
Colin Tutor, Interim Assistant City Manager (via e-mail)
Brian Desatnik, Director of Community Development (via e-mail)
Craig Bradshaw, City Engineer (via e-mail)



July 20, 2012

Mr. Ivar Ridgeway
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Dear Mr. Ridgeway:

The City of Beverly Hills ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001 ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Beverly Hills, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the

Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first

day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City’s Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth

Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution California also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has **removed** the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board’s discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA’s regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of

California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.*, Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with

California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee’s discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitttees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitttees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitttees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees’ data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet’s open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees’ actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of

imposing liability for contributions to “commingled discharges” of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee’s discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee’s actions. *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees’ stagnant general fund revenues is increasingly challenged by escalating costs and service demand levels and cannot absorb the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

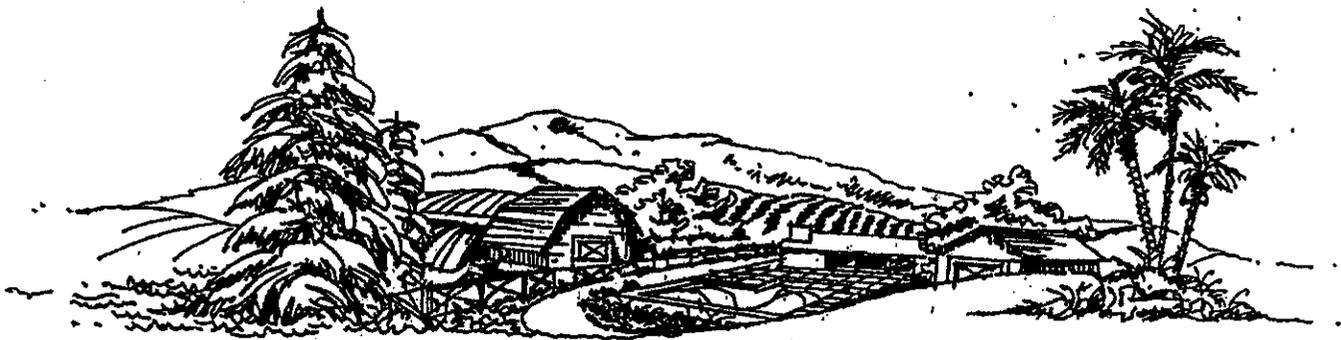
As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Chris Theisen
Assistant Director of Public Works & Transportation

cc: Jeff Kolin, City Manager
Laurence S. Wiener, City Attorney
Christian Di Renzo, Senior Management Analyst



CITY OF BRADBURY

Incorporated July 26, 1957

July 23, 2012

Mr. Ivar Ridgeway
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Regional Water Quality Control Board, Los Angeles
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Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway and Ms. Purdy,

The City of Bradbury appreciates the opportunity to provide comments on the subject draft order for the Los Angeles region. Bradbury recognizes and appreciates the effort that the Regional Board staff has put into the development of the proposed Permit however, the City of Bradbury has serious concerns regarding the Draft Order as currently proposed.

Please note that the City also supports comments submitted to you by the Los Angeles Permit Group (LAPG). The City's comments are intended to be complimentary and more specific to the issues raised in the LAPG group letter.

Comment Period for Draft NPDES Permit for MS4 Discharges and Timing of the Public Hearing

As has been stated by others on multiple occasions, given just the sheer magnitude of the draft document, the City is requesting more time to review the more than 500 pages of permit. The comment deadline of July 23, 2012 is far too short to address all the potential issues, concerns and proper analysis of the impacts to the community of such important policy. This is the most significant program effecting water quality in the past 20 years and is vastly different from the previous permit; more time is needed to fully vet the implications this will have on small cities with limited staff and resources. Staff has an obligation and duty to adequately inform elected officials, legal counsel and city management regarding the fiscal and practical impacts of this draft order. The time to properly evaluate the permit, assess its financial, legal, and personnel impacts, and inform the City's elected officials cannot be accomplished in the 45 day review period. The City supports the request of the LAPG that the Regional Board provide another complete second draft and provide 180 days to review and comment.

Additionally, the scheduling conflict that exists with the Regional Board's Permit Adoption Hearing on the matter and the League of California Cities Conference on September 5-7, 2012, does not make this process open and transparent. City leaders have been scheduled to attend this Conference for more than half a year prior to the date announced on the hearing notice, and with such important issues at stake, it seems disingenuous to exclude them from the process. The City respectfully requests that the adoption hearing be rescheduled after September 5-7, 2012 to allow for elected officials of the permitted agencies to attend the hearing. Ensuring that city leaders and decision makers have the opportunity to attend and provide comments at the hearing is the right thing to do.

Receiving Water Limitations

The Receiving Water Limitations language in the Draft Order creates an unwarranted liability to the cities that is unnecessary and counterproductive. The City feels that the Receiving Water Limitations is not necessary and does not support the improvement of water quality but increases the likelihood of small cities, such as Bradbury, having to waste limited resources to fight costly litigation instead of working on programs to improve water quality.

The City of Bradbury has significant concerns with the language included in the Draft Order:

1. Recent court decisions have created a new interpretation of the Receiving Water Limitations that creates a liability for the Permittees without a commensurate increase in protection of water quality.
2. The Receiving Water Limitations as written is not a federal requirement so it is not necessary to maintain the current language.
3. The Receiving Water Limitations as written is contradictory to the Watershed Management Program.
4. Alternative approaches are available to address the concerns and maintain the intent of the language in the approach and we request that RWQCB utilize this alternative language.

The City respectfully requests that the Receiving Water Limitation language be completely reconsidered in light of the numerous and varied issues that are outlined in the LASP comments. The City supports the recommendation to use the draft language that was developed by the California Association of Stormwater Quality (CASQA).

Cost/Economic Implications

While Bradbury supports the overall efforts of water quality and environmental programs, the City has become increasingly concerned about the cost associated with the Mandates.

Contrary to the Draft Order, there are provisions that exceed federal requirements in several places, thereby creating potential unfunded State mandates. These include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Further, the draft order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the permit. Cities are limited greatly in their ability to raise funds for such expenditures. This provision may not be legal as it appears to violate the State Constitution, Article XVI, Section 18. Cities have a limited amount of funds and limited resources under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the

State's Prop 218 regulations, and require a public vote; so, this is an item that is not under direct control of the local cities – but the voters of the State of California.

A budget survey was conducted by the Los Angeles River Watershed Management Committee in June of 2010 in order to determine the impacts of the proposed Bacteria TMDL; 21 watershed cities responded to the survey. Ninety percent (90%) of the cities have deficits in their General Fund budgets. Eighty-six percent (86%) of the cities have reduced city services, 50% have implemented hiring freezes, 25% have laid-off employees and this was all before the State took away cities Redevelopment Agencies. The State of California is in an economic crisis both in the private and public sectors and yet just this one TMDL (Bacteria) implementation costs for the City of Bradbury in excess of twice the City's limited General Fund Budget of \$810,000. The TMDL's estimated annual costs to Bradbury are \$1,456,000 for just the Bacteria TMDL in the LA River Watershed. Bradbury is also in the San Gabriel River Watershed.

Relying on the funding formula adopted by the cities to pay for the LA River Metals TMDL requirements, the City of Bradbury would need 180% of its current General Fund budget to pay for the TMDL's annual costs. That is impossible. Local resources are also directed to a number of health, safety and quality of life factors, such as Police and Fire. Thus, all these factors, health, safety, quality of life and clean water need to be developed in balance with each other.

While Bradbury may be the most dramatic case, the new costs will be difficult for any of these cities to absorb under the best of economic circumstances and is complicated by the current economic recession. The 2/3rds (Proposition 218) vote for storm water taxes is a difficult hurdle to overcome, so Bradbury would most likely be forced to cut existing services to afford the TMDL or consider even worse options. By this I mean the City would cease to exist - - placing a greater burden on the other cities and the County of Los Angeles.

While the City does not believe the Board's intent is to bankrupt cities, the simply fact of implementing many of these TMDL's without further consideration to their economic impact balanced with improved water quality, this is exactly what will happen around the San Gabriel Valley and throughout the State. We respectfully request the Board complete an economic analysis regarding the economic implications of the permit's implementation and work directly with the cities to find cost effective solutions to these issues affecting all of us.

Further, as stated by the LAPG, the Fact Sheet contained in the Draft Order makes a unilateral statement that the Regional Board has determined that the permit requirements do not exceed Federal Requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. The City rejects the explanations contained within the Draft Order that pertain to economic implications, including the determination that this Draft Order does not qualify as an 'unfunded mandate' in the State of California. The City is in agreement with the numerous written and oral comments from many agencies that demonstrate that the Draft Order requirements are beyond the scope of Federal Regulations.

Our request is for the Regional Board to substantiate this statement for each section of the permit. The City would also like to refer that the court decisions on unfunded mandates claims are still on appeal and it is premature to conclude on the merits of the appeal.

The City of Bradbury strongly recommends that the State Board **not** adopt the Draft Order until a complete economic analysis has been done regarding the economic implications of the permit's implementation.

The City looks forward to working with the Regional Water Board and its staff on future revisions to the Draft Order. Please contact City Manager Michelle Keith at (626) 358-3218 if you have any questions regarding the information provided in this letter.

Sincerely,



Michelle Keith
City Manager



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July 23, 2012

Mr. Ivar Ridgeway
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LAMS42012@waterboards.ca.gov

Dear Mr. Ridgeway:

COMMENTS ON THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, INCLUDING UNINCORPORATED AREAS OF LOS ANGELES COUNTY, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH (LOS ANGELES COUNTY MS4 PERMIT)

NPDES PERMIT NO. CAS004001

Thank you for the opportunity to comment on the draft Los Angeles Basin National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) discharges. The City of Burbank (City) believes the following points are of relevance and should be taken into strong consideration when developing this permit:

- Municipalities have little or no control over the behavior of individuals who may intentionally or inadvertently contribute to storm water pollution through their actions e.g. littering, animal/pet droppings, illegal discharges and illicit connections to the storm drain system. While we believe permittees should institute non-structural and structural controls to prevent or control pollutants to the “maximum extent practicable”, permittees should not be responsible for the actions of which we have no control.

- At this time, there is no guarantee that the Los Angeles County Flood Control District's water quality funding initiative will be passed and approved by the property owners. Given this uncertainty and the current economic climate which has also affected the State Regional Water Quality Control Board programs and staffing, reasonable and achievable requirements are a must. The draft MS4 permit as currently written is not achievable and will subject permittees to violations, penalties, and fines. It should be noted that at this time, 3 cities in the State have filed for bankruptcy. This draft MS4 permit will lead to further filings. It should also be noted that the draft MS4 permit as currently written will not necessarily lead to improved water quality – for instance, meeting interim or final waste load allocations for a particular Total Maximum Daily Load (TMDL) at the outfall will not necessarily mean the receiving water's beneficial use criteria are being met – in other words, point sources¹ are not the only source of pollutants and yet this MS4 permit places a great burden on the permittees to meet stringent numeric standards without having first assessed the condition of the receiving water/watershed.
- The City believes that Provision V.A of the Draft MS4 Permit Tentative Order is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in storm water runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for storm water discharges to cause or contribute to exceedances of standards in the receiving water itself. On July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. The City requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Enclosure 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. The City recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees.

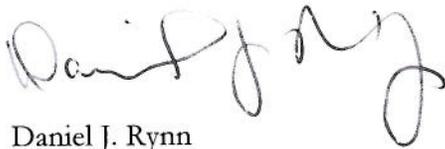
¹ Other sources include aerial deposition, legacy issues, bacteria regrowth within the waterbody, non-point source discharges, and natural sources.

- The Los Angeles Regional Water Quality Control Board (Regional Board) has held several workshops to present the various programs proposed in the draft MS4 permit. Most of these workshops have had the Regional Board staff present the main topics/programs to the Regional Board members, and have then opened up the floor for public comments for three minutes each. In short, the Regional Board members have asked questions of their staff and responses were given without much, if any consideration of the public's concerns. The process is frustrating for permittees in that our issues and concerns are not being adequately heard or addressed. The permittees represent their constituents when appearing before the Board, and we are concerned that various pressing concerns with this permit have yet to be heard. Requests have also been made to extend the comment period and postpone the Board hearing to allow more time for effective dialog between permittees and staff. Unfortunately these requests have been denied stating that a number of opportunities for engagement and comment have been provided and that the Board has directed staff to adhere to schedule to meet the September Board meeting. It should also be noted that the Ventura County MS4 permit was adopted by the Regional Board on May 7, 2009. The Ventura County MS4 permit was a cooperative effort involving co-permittee public entities, some environmental groups and Regional Board staff over a period greater than two years, with drafts of the permit made first available in December 2006.
- Provision II.F of the Draft MS4 Permit Tentative Order states "Pursuant to 40 CFR sections 122.26(d)(1)(ii) and 122.26(d)(2)(iv), each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." It should also be noted that Footnote 22 on page 37 of the Tentative Order states "Pursuant to 40 CFR § 122.26(a)(3)(vi), a Permittee is only responsible for discharges of storm water and non-storm water from the MS4 for which it is an owner or operator." However, Provision VI.E.5.b.i.(1)(c)(i) of the Tentative Order states "A Permittee shall be deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified full capture systems as described in paragraph (1)(c)." In the 1937 Los Angeles County Flood Control Act, Item 11 of Section 28-2 states "*To remove, carry away and dispose of any rubbish, trash, debris or other inconvenient matter that may be dislodged, transported, conveyed or carried by means of, through, in, or along the works and structures operated and maintained hereunder and deposited upon the property of said district or elsewhere.*" The LA County Flood Control District lost its appeal recently in the lawsuit regarding exceedances at the Wardlow Mass Emission Monitoring Station. In the Decision, the Court explicitly stated that the Federal Clean Water Act does not address the source of pollutants, but rather that the owner of a point source discharge is legally responsible for the quality of the water leaving its outfall. Clearly, the District is legally responsible for any trash that enters its catch basins and the draft MS4 Permit Tentative Order must also make this distinction clear.

It is our hope that our comments help you improve and revise the MS4 permit from its current draft. We understand the great challenge the Regional Board has with meeting the requirements of the Clean Water Act. However, permittees are now challenged to provide traditional services to their residents and property owners, with permittees needing to carefully weigh the costs of regulatory change against the accrual of potential benefits associated with this region's MS4 permit.

Finally, the City has been participating in the LA Permit Group meetings and efforts, and is in strong support of the comments the LA Permit group has developed for this draft MS4 Permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Rynn". The signature is fluid and cursive, with a large loop at the end.

Daniel J. Rynn
City of Burbank
Assistant Public Works Director

Enclosure 1 – CASQA Model Receiving Water Limitations Language

ENCLOSURE 1



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



CITY of CALABASAS

July 23, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to rpurdy@waterboards.ca.gov; iridgeway@waterboards.ca.gov;
LAMS42012@waterboards.ca.gov)

SUBJECT: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control

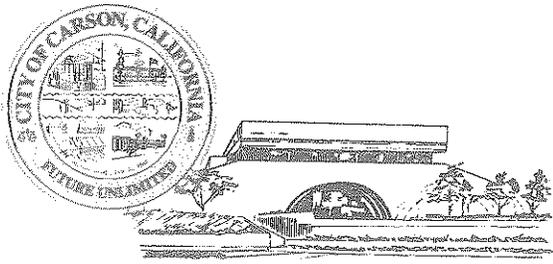
Dear Mr. Ridgeway:

It has come to my attention that the Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control has our old city hall address listed in "table 2". Please update/change the City of Calabasas mailing address to: 100 Civic Center Way, Calabasas Ca, 91302.

Thank you for your attention to this matter. If you have additional questions please give me a call at (818) 224-1600 or email @ dpankau@cityofcalabasas.com

Sincerely,

Daniel Pankau,
Environmental Services Assistant



CITY OF CARSON

Transmitted via e-mail to: LAMS42012@waterboards.ca.gov

July 19, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Comments on Los Angeles Municipal Separate Storm Sewer Tentative Order No. R4-2012-XXXX NPDES Permit No. CAS004001

Dear Mr. Ridgeway:

The City of Carson is pleased to submit the attached comments for your consideration in regard to Tentative Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports the comments submitted to you from the Los Angeles (LA) Permit Group. Many of our attached comments discuss additional issues not addressed in the LA Permit Group's letter; the remaining comments are complimentary and provide specificity to those issues raised in their letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to contact the City's Storm Water Quality Programs Manager, Patricia Elkins, at (310) 847-3529.

Sincerely,

David C. Biggs
City Manager

cc: Mayor and City Council

Attachments: Comments regarding Tentative Order No. R4-2012-XXXX NPDES Permit No. CAS004001 (11 pages) and Attachment E: Monitoring and Reporting Plan (7 pages)

**Comments from the City of Carson
Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*
- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or

public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

**Comments from the City of Carson
Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)**

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how

that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

*Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.*³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater*

management plan) and other requirements of the permit's limitations. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water

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quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards: they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.⁶*

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page 11

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not, as the tentative order's fact sheet asserts, include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. The tentative order should not include detailed contact information for the Permittee that can and does change frequently such as in Table 2. Facility Information. A consultant's name should not be used.

- a. Issue: Beginning on Page 1 of the order, Table 2. Facility Information includes Permittee (WDID) and Contact Information. In this table personnel names, titles, phone numbers and/or e-mails are indicated and will not likely remain the same for the duration of the permit.
- b. Issue: In many cases, a consultant name is indicated as the contact for a Permittee and this is inappropriate.
- c. The City of Carson contact personnel name is correct; however, the title is not.

Recommended Corrections: Delete all personnel references. Indicate only the Permittee, WDID #, mailing address, phone number and contact title (example: Director of Public Works). Otherwise, provide this information in another document as it does not belong in the tentative order. Please correct the title for Patricia Elkins to read, "Storm Water Quality Programs Manager."



CITY OF COVINA

125 East College Street • Covina, California 91723-2199

Public Works Department
Development Services Division
Environmental Services Section
(626) 384-5480 • FAX (626) 384-5479

July 23, 2012

Mr. Ivar Ridgeway
320 W 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150
Via email to: LAMS42012@waterboards.ca.gov; iridgeway@waterboards.ca.gov;
rpurdy@waterboards.ca.gov

Subject: Comments on Tentative Order No. R4-2012-XXXX NPDES Permit No. CAS004001

Dear Mr. Ridgeway:

The City of Covina is pleased to submit the attached comments regarding Tentative Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City of Covina is also in support of the comment letter submitted by the Los Angeles Permit Group (LAPG), of which the City is an active participant, and incorporates the LAPG comments by reference (Attachment C). The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Also, please replace the City of Covina's Facility Contact name listed in the Tentative Order with my name, Vivian Castro, Environmental Services Manager. The other contact information listed for the City, including my email, is correct.

Thank you for the opportunity to submit comments on this very important matter. Please direct any questions regarding this letter to me at (626) 384-5480.

Sincerely,

Vivian Castro
Environmental Services Manager

cc: Covina City Council Members
Daryl Parrish, City Manager
Steve Henley, Director of Public Works
Kalieh Honish, Deputy Director of Public Works

Attachments: (A) City of Covina Comments on Tentative Order No. R4-2012-XXXX NPDES
Permit No. CAS004001.

(B) CASQA Proposed Receiving Water Limitation Provision

(C) LAPG Comments re_Tentative LA MS4 Order No.R4-2012-XXXX_7-13-12
FINAL

CITY OF COVINA COMMENTS ON TENTATIVE ORDER NO. R4-2012-XXXX

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The Tentative Order specifies that “*Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.*” The Tentative Order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, however, the Tentative Order specifies a different compliance method -- meeting a “numeric” WQBEL that is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL – to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff does not appear to have performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – despite that USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state’s anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the Tentative Order contains no reference to a reasonable potential analysis – a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County.

¹United States Environmental Protection Agency, *NPDES Permit Writers’ Manual*, September, 2010, page 6-30.

Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring: *The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA’s 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes “numeric” limitations in broad terms, including “numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover.” In the

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, November 12, 2010.

context of the 2010 memorandum, the term “numeric effluent limitation” should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss’s memorandum, creates the conclusion that (1) numeric WQBELs are permissible if “feasible” and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: “we will generally not require “strict compliance” with water quality standards through numeric effluent limitations’ and instead ‘we will continue to follow an iterative approach, which seeks compliance over time’ with water quality standards”.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

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The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*.

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the Tentative Order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under **4. Non-stormwater Discharge Prohibitions.**

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- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The Tentative Order RWL version reads: *“Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.”*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties: *“Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.”*

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Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO

99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit's limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the Tentative Order with the CASQA model (Attachment B) or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the Tentative Order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the Tentative Order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

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With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

Conclusion: The Tentative Order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the Tentative Order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The Tentative Order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations – that is a requisite feature in all MS4 permits issued in California. The Tentative Order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the Tentative Order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: "we will generally not require "strict compliance" with water quality standards through numeric effluent limitations' and instead 'we will continue to follow an iterative approach, which seeks compliance over time' with water quality standards".

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites*

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the Tentative Order.

⁶Ibid., page 35.

⁷See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

Recommended Correction: Regional Board staff should incorporate the iterative process into the Tentative Order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. The Tentative Order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. Issue: The Tentative Order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The Tentative Order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the Tentative Order’s fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”*⁸ There is no mention of watercourses.

The Tentative Order’s fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to “effectively prohibit” non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. The Tentative Order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The Tentative Order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The Tentative Order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the Tentative Order.

6. The Tentative Order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

a. Issue: The non-stormwater discharge prohibition under the Tentative Order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only “to” the MS4 makes this issue academic. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. The Tentative Order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.

- a. Issue: Part IV.A.1 of the Tentative Order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the Tentative Order because they are generally not required of Phase MS4 permits. TBELs are referenced in the Tentative Order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the Tentative Order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the Tentative Order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

- a. Issue: Generally, MCMs should not be detailed in the Tentative Order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

revise. If specific BMPs remain in the Tentative Order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The Tentative Order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

d. Issue: The MCMs in the Tentative Order require off-site infiltration for groundwater recharge purposes. The Tentative Order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated

upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order’s MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”¹⁰

Conclusion: The order’s MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order’s MEP definition with the above-mentioned language.

10. Tentative Order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6)

¹⁰Op. Cit., page 35.

requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

Section: V. Receiving Water Limitations

No.	Page	Section	April 2012 Comment (LASP)	July 2012 Comment
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the CalTrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft Tentative Order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.

Section: VI. C. Watershed Management Programs

No.	Page	Section	April 2012 Comment (LASP)	July 2012 Comment
1	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point.	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft Tentative Order.
2	46-53	Various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent

3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees' authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
5	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility.	Same comment
6	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs.	Same comment
7	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more or less than number.	Changes made but unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.

8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."
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VI. D. Minimum Control Measures

No.	Page	Citation	Comment
Discharge Prohibition			
1	26	III.A.	<p>RB staff proposed language requires the permittees to "prohibit non-stormwater discharges through the MS4 to receiving waters" except where authorized by a separate NPDES permit or conditionally.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as "a discharge to the MS4 that is not composed entirely of stormwater". In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>"Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate</i></p>

			<p><i>storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges <i>from</i> the MS4 discussed.</p> <p><u>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</u></p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
2			<p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
3	28	III.A.2.b.iv	<p>The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.</p>
4	-	General	<p>It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.</p>
5	Table 8	General	<p>Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDS category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.</p>

General			
1	-	-	<p>The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used:</p> <p>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</p> <p>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</p> <p>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
1	38	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

2	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
3	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
4	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
5	40	2.b	<p>Staff proposal states: Permittee must submit a statement certified by its chief counsel that the Permittee has the legal authority to implement... and submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>

Fiscal Resources			
1	40	A.3	The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).
2	40	A.3.c	Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order" This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?
3	40	A.3.c	Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this order." Most MS4's do not have an adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.
Public Information and Participation Program			
1	58	D.4.a.i	Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..." Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.
2	60	D.4.d.i.(2).(b)	Staff proposal states: "... including personal care products and pharmaceuticals)" The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.
3	60	D.4.d.i.(3)	The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?

Industrial/Commercial Facilities Program			
1	63	D.5.d-f	These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.
2	63	D.5.e.i	Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.
Development Planning Program			
1		General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
2	67	D.6.a.i.3	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
3	69	D.6.b.ii.1.a	Please clarify of this paragraph apply to what is existing on the site or what is proposed.
4	70	D.6.c.i.2	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
5	70	D.6.c.i.4	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
6	70	D.6.c.ii.2	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
7	71	D.6.c.ii.1.b.ii	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
8	72	D.6.c.iii.2.b	The requirement to provide treatment for the project site runoff when an offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing on-site requirement when mitigation occurs in an offsite location.
9	72	D.6.c.iii.4	The conditions listed for offsite projects are overly restrictive. Also considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.

10	75	Table 11	The effluent concentration benchmarks for treatment BMPs will not be attainable since these values were selected from the median of the stormwater BMP database site. This costly requirement will result in constantly modifying BMPs without any chance of compliance.
11	75	D.6.c.v.1.a.i	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
12	76	D.6.c.v.1.a.iv	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
13	77	D.6.c.v.1.c.i	The requirement to retain on site the 95th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
14	80	D.6.d.i.1	The requirement of 180 days for the “Local Ordinance Equivalence” may be difficult to be met due to the typical processing and public review period for changes to local municipal codes.
15	A-1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they maybe the only applicable BMPs.
Development Construction Program			
1	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State’s General Construction Permit (GCASP).
2	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
3	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to “Applicable Set of BMPs for Construction Sites”
4	84	D.7.e-j	All these provisions refer to the construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
5	84	D.7.g-j	Refer to the State’s GCASP and its SWPPP requirements to avoid duplication or conflicts.
6	85	D.7.g.ii.9	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP’s SWPPP requirements.
7	87	Table 13	Delete. This table is the same as Table 12.
8	90	Table 17	The suggested inspections could not be possibly accommodated based on current resources because of the concurrent need to visit all sites. However if the GACSP funding is transferred for locally-based enforcement, a reduced number of inspections may be accommodated. See item 4.

9	90	D.7.j.ii.2.a	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
Public Agency Activities Program			
1	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.
2	94	D.8.d	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.
3	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
4	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for flood management projects" Flood management projects need to be clearly defined.
5	102	D.8.h.vii.1	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
6	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
Illicit Connection and Illicit Discharge Elimination Program			
1	-	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".

2	106	D.9.a	Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
3	107	D.9.b.i.1	<p>Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems.</p> <p>"The contributing drainage area for each outfall should be clearly discernable..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.</p>
4	107	D.9.b.iii	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
5	108	D.9.c.i	The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11., c. i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
6	108	D.9.c.i.4	"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
7	109	D.9.d.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not know if a discharge is illicit until the investigation is completed.
8	109	D.9.d.iii.1	"Illicit discharges suspected of sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.

Section: VI. E. TMDLs

No.	Page	Citation	April 2012 Comments	July 2012 Comments
1	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p>	<p>This is a critical issue that was not addressed in the recent reopener. Statement that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included.</p>
	pages 111 - 123 and Attachments K - R	TMDL	<p>(continued from above) Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	<p>This is a critical issue that was not addressed in the recent reopener. The reference beach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included</p>

2	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference beach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
3	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be address and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.
4	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.

			heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	
5	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan
6	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
7	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic	Same comment

			carbon basis.	
8	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans
9	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment
10	pages 111 - 123	TMDL	The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the	Same comment

	and Attachments K - R		note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.	
11			(continued from above) Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.	
12	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."	Same comment

13	pages 111 - 123 and Attachments K - R	TMDL	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
14	pages 111 - 123 and Attachments K - R	TMDL	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."	Same comment
15	pages 111 - 123 and Attachments K - R	TMDL	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee.	Same comment

16	113	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."	Same comment
17	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit
18	pages 111 - 123 and Attachments K - R	TMDL	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.(c) but it is listed in E.5.a.ii and Attachment M B.
19	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?	Same comment

20	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	Please clarify. The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
21	112	E.2.b.iv	For "each Permittee responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There's allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
22	116	E.4.a	This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus	Same comment

			its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	
23	116-123	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
24	116-123	E.5	Please clarify that cities are not responsible for retrofitting	Same comment
25	114	E. 2. e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
26	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.
27	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions	Same comment

28	116-123	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
29	116-123	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River	Same comment
30	pages 111 - 123 and Attachments K - R	TMDL	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.	Same comment
31	Attachment O	3.a)1	For the LA River metals, some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
32	Attachment O, page 7	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
33	Attachment P	P1-8	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment
34	pages 111 - 123 and Attachments K - R	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations	Same comment
35	pages 111 - 123 and Attach	Table K 8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment

	ments K - R			
36	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment
37	Attachment N	N1 - N9	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPS being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	N1-N9	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.	Same comment

39	Attachment N	N1-N9	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations—Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E, Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."
41	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
42	pages 111 - 123 and Attachments K - R	pages 111 - 123 and Attachments K - R	N/A	Suggest wet weather compliance be partially defined by a design storm

Additional Comments				
No.	Page	Citation	April 2012 Comment	July 2012 Comment
1	13-26	Findings	several related	<p>Please add findings regarding iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The previous order lacked the iterative process, which has resulted in violations for several Los Angeles County permittees and exposure to third party litigation. However, the State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p>

				(continued from above) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.
2	146-149	Fact Sheet and Permit - Unfunded Mandate	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit and the economic issues that are incorrect.



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance

that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board Jonathan
Bishop, Chief Deputy Director – State Water Board Alexis Strauss,
Director – Water Division, EPA Region IX

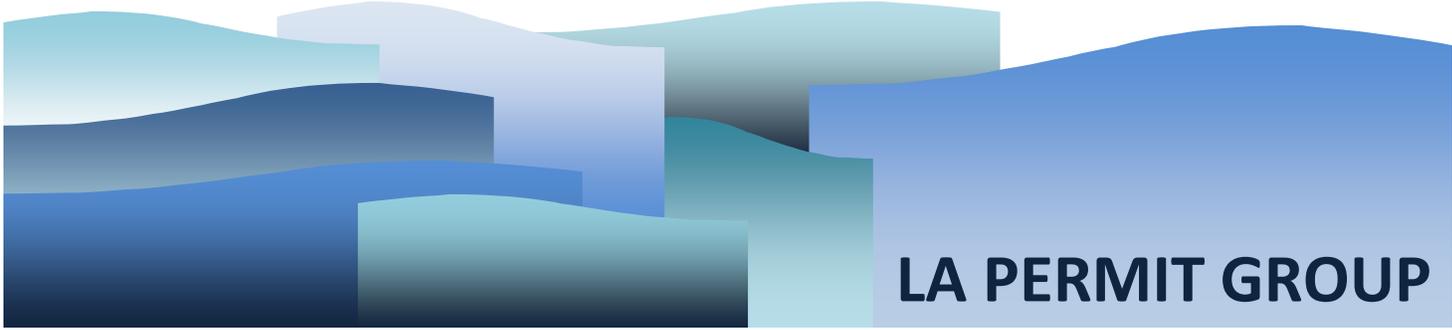
CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non- storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.
 - b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval,

including the implementation schedule and any modifications to this Order.

- d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody---pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant--- specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



LA PERMIT GROUP

July 23, 2012

Mr. Ivar Ridgeway
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
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Electronically to :

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, **it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.**

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectfully request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

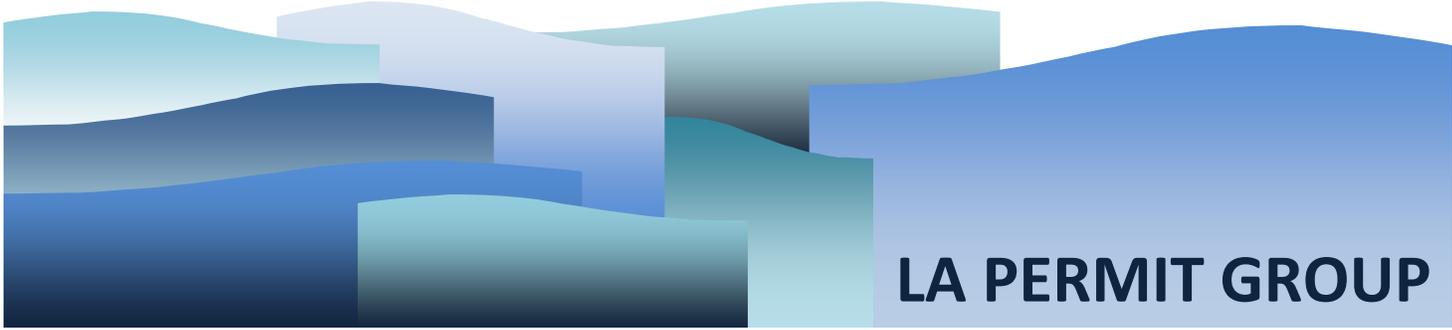
Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

¹² S. Unger's 7/13/12 letter to H. Maloney and the LA Permit Group.



LA PERMIT GROUP

July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

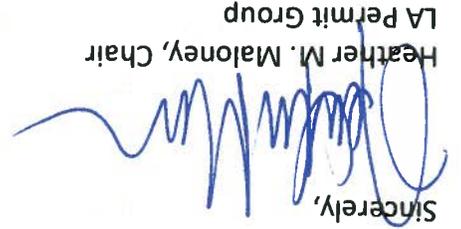
As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, we respectfully request that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document. We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

Exhibit A

LA Permit Group

City of Agoura Hills	City of Gardena	City of Pico Rivera
City of Alhambra	City of Glendale	City of Pomona
City of Arcadia	City of Glendora	City of Redondo Beach
City of Artesia	City of Hawthorne	City of Rolling Hills
City of Azusa	City of Hermosa Beach	City of Rolling Hills Estates
City of Baldwin Park	City of Hidden Hills	City of Rosemead
City of Bell	City of Huntington Park	City of San Dimas
City of Bell Gardens	City of Industry	City of San Gabriel
City of Bellflower	City of Inglewood	City of San Marino
City of Beverly Hills	City of La Verne	City of Santa Clarita
City of Bradbury	City of Lakewood	City of Santa Fe Springs
City of Burbank	City of Lawndale	City of Santa Monica
City of Calabasas	City of Los Angeles	City of Sierra Madre
City of Carson	City of Lynwood	City of South El Monte
City of Claremont	City of Malibu	City of South Gate
City of Commerce	City of Manhattan Beach	City of Torrance
City of Covina	City of Monrovia	City of Vernon
City of Culver City	City of Montebello	City of West Covina
City of Diamond Bar	City of Monterey Park	City of West Hollywood
City of Duarte	City of Paramount	City of Westlake Village
City of El Monte	City of Pasadena	

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Agency/Reviewer: LA Permit Group

Comment No.	Doc. Reference		Comments	
	Page	Section	Apr-12	Jul-12
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards .</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofiting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers . Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

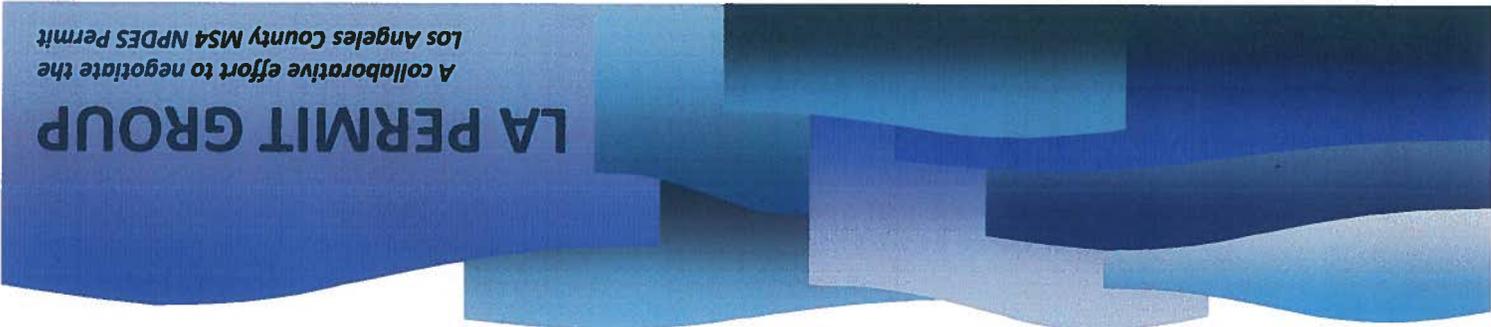
17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s).”</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year...”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls in the inventory within 5 years...”

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals



February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However, the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

**LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12**

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:

- a. evaluates the current conditions in impaired water bodies (identified by effective TMDLs), facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- c. identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4
- d. promotes the IWMP and provides time schedule incentives.

The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. Pyrethroid Study. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. Hydromodification Study. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts¹. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. Low Impact Development Study. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort. *Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.*

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23?) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide 18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:

- a. Unclear how baseline non-stormwater flows are established.
- b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).
- c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

² Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

- d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.
- e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.

- f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.

- g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watersheds and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permittees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health³ or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

³ The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS, cont.

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLA, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a "one size fits all" approach.

- a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:

- i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
- ii. Runoff reduction BMPs;
- iii. Treatment control BMPs where effectiveness information is available;
- iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
- v. Research and development for pollutant types where effective BMPs have not been identified.

- b. These categories will be incorporated as part of the Stormwater Quality Management Plans.

- c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.

2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:

- a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
- b. specific procedures for evaluating BMP effectiveness; and
- c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEF given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

- "point sources", which are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA."
2. Define BMP-based WQBELs as "implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAS, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAS." This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
 3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
 4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
 - a. Not submitting the SQMP.
 - b. Not implementing all elements of the SQMP in accordance with the approved schedule.
 - c. Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states "The Permittees shall comply with the following effluent limitations and/or receiving water limitations..." This is followed by tables with the numeric WLAs.

We have three concerns with this language:

1. The language implies that the effluent limitations are strictly numeric.
2. The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
3. The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

EXHIBIT B

We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.

May 14, 2012

Renee Purdy

Regional Program Section Chief

Los Angeles Regional Water Quality Control Board

320 4th Street, Suite 210

Los Angeles, CA 90013

Ivar Ridgeway

Chief, Stormwater Permitting

Los Angeles Regional Water Quality Control Board

320 4th Street, Suite 210

Los Angeles, CA 90013

SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the

Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provide stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose to develop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAS, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAS.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAS solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹), State Board orders (Order

¹ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)² have affirmed that WLAS can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAS as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAS in NPDES permits³. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how the WLAS are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible⁴.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAS in this permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAS. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAS by implementing actions that they have estimated to be the best of their knowledge will result in achieving the WLAS and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAS are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAS, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

² "[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit." (Order WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

³ U.S. EPA, *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner* (Nov. 10, 2010).

⁴ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopening process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*⁵ (NRDC v. County of LA) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party lawsuits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

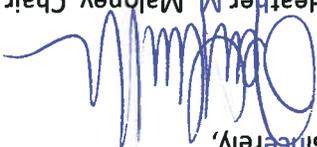
⁵ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

Beyond the legal/liability aspect of the receiving water limitations we would submit that in a practical sense the RWL works against the Watershed Management Program proposal. On the one hand the municipalities will develop watershed management programs that are based on the high priority water quality issues within the watershed. Consistent with the working proposal for the watershed management programs we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal the municipalities will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State there may be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms but according to the current RWL proposal, the municipalities must also address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectfully request that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it is important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Document Name: TMDL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference Page	Section	Comments	Rvwr (optional)	Author Response
1	5	B.1.c.(2)	Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.		
1	5	B.1.c.(2)	Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.		
1	5	B.1.c.(2)	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		

2		B.1.	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.		
3		B.1.	The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.		
4	5	B.1.c.(3)	Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".		
5	1-6	B.1 throughout	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".		

6	5	B.1.c(3)	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.		
7	6-7	B.2.	Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.		
8	7	B.3.	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]		
8	7	B.3.	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.		

9	7	B.3	<p>Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.</p>		
10	3	C.2.c)	<p>The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.</p>		

11	3	C.2.c)	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>		
12	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.</p>		
13	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.</p>		

14	3	C.3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		
15	4	C.5.a)	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.		
16	4-8	C.5.	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		
17	1, 3, 15	Attach I	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		
18	2	E.2.b.v.1.	Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."		

19	3	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."		
20	4	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.		
21	8	E.5.b.(c)	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.		
22	7	E.5.a.i-x	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?		
23	2	E.2.b.ii	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		
24	2	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.		

26	3	E.2.c.iii	For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopener purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.		
28	5	E.4.a	This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.		
29	12-13	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.		
30	7	E.5	Please clarify that cities are not responsible for retrofitting.		
31	4	E. 2. e	Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.		

32	4	E.3	Instead of TSO, please include mechanisms that allow for time to complete Basin Plan Amendments for EPA Established TMDLs. This will protect cities from unnecessary vulnerability and allow for these TMDLs to be incorporated into the Watershed Management Programs. Incorporate permit language that will reopen the LA MS4 upon completion of the Basin Plan Amendments necessary for coordination with these programs.		
33	Santa Clara River	A. 4 c)	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.		
34		1 E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
35			Santa Ana River TMDLs should be removed; this TMDL is eliminated		
36	9	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institutional controls will supplement full and partial capture to attain a determination of "zero" discharge.		
37	10	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.		
38	1 of 19	B	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.		
39	3 of 24	3.a)1	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.		
40	6 of 24	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.		
41	1 of 9	1.b	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.		
42	1 of 9	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations.		

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations-- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Document Name: Watershed Management Program Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment		Doc. Reference		Comments	Rvwr (optional)	Author Response
No.	Page	Section				
1	4	(4)		Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		
2	2, 11, 13	various		The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		
3	2, 3	Table and C.2.a - d		Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs		
4	4	C.3.a.iii		Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
5	9	(5)		Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility		
6	2	C.2		Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs		

7	9	(4)(c)	<p>While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than than number.</p>		
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Document Name: RWL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference		Comments	Rvwr (optional)	Author Response
	Page	Section			
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		



LA PERMIT GROUP

For more information please contact:
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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan.. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or pursue a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position² that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State's General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupportable. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

“MCMs for ID/IC”

The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges.

Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

**LOS ANGELES PERMIT GROUP COMMENTS
MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
General			
1	2	C.1.c	<p>The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used:</p> <p><i>“Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p><i>“New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i></p> <p><i>“Redevelopment” means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
2	4	2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

3	4	2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
4	4	2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
5	5	2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible; to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
Fiscal Resources			
6	5	3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>

LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

7	5	3.a	<p>Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
Public Information and Participation Program			
8	6	6.a.iii	<p>Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
9	7	6.d.i.2.b	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
10	8	6.d.i.3	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
Industrial/Commercial Facilities Program			
11	10	7.b.i.4	<p>Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL..."</p> <p>As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICSs/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

12	10	7.b.ii.6	<p>Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility"</p> <p>Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."</p>
13	11	7.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>
14	17	7.e.i	<p>Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.</p>
15	17	7.e.i	<p>Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.</p>
Development Planning			
16	21	8.b.1	<p>This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.</p>
17	21	8.b.i.1.g	<p>Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.</p>
18	21	8.b.i.1.g	<p>The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.</p>
19	21	8.b.i.1.g	<p>Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

20	21	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	24	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)k)-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i(1) statement.
22	24	8.c.i.2	The SWQDv definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "... designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDv) defined as the runoff from all impervious surfaces that are generated by a:..."
23	24	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	24	8.c.i.5	Please define the term "wet-weather season".
25	24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	24	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscaping within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26	Table	The table provided lacks clarity and the use of M_v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26	Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	28	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDv will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the “peak flow control” requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E_p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

41	40	8.d.iv.b	This requirement should be limited to the sites already visited as part of the “critical sources” program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.
Development Construction			
42	41	9.d	Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.
43	41	9.e.1.i	Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.
44	42-43	9.f.ii	The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.
45	43	9.f.ii.3.i	An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.
46	43	9.f.ii.4	The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.
47	43	9.f.ii.5	The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permittees without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permittees are not made responsible parties for this activity.
48	43	9.f.ii.8	The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.
49	43-44	9.g.i	The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement.
53	48	9.h.ii.2	The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	50	9.h.ii.5.b	The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans." the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are install properly, and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

57	54	10.d	<p>Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards."</p> <p>This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.</p>
58	56	10.d.v	<p>Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.</p>
59	56	10.e.ii	<p>Staff proposal states: "Each Permittee shall implement the following measures for flood management projects"</p> <p>Flood management projects need to be clearly defined.</p>
60	60	10.g.ii.7	<p>Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters..."</p> <p>The method which a pesticide that causes "impairment" to waterbodies needs to be defined.</p>
61	62	10.h.iv.1.c	<p>Staff proposal states: "Provide clean out of catch basins... 24 hours after event"</p> <p>Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."</p>
62	63	10.h.vii.1	<p>This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.</p>
63	64	10.h.ix	<p>Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...."</p> <p>The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do “non-stormwater outfall-based monitoring program” as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a “non-stormwater outfall-based monitoring program”. Please revise each mention of “ <i>Each Permittee</i> ” to “Permittee/Permittees” to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving waterbody monitoring in-lieu of outfall monitoring.
65	-	11	A definition of “outfall” is required for clarity. An “outfall” for purposes of “non-stormwater outfall-based monitoring program” should be defined as “major outfall” pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of “ <i>outfall</i> ” to read “major outfall” when discussing “non-stormwater outfall-based monitoring program”.
66	68	11.a	Some small cities do not have digital maps. In the “General” category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, “ <i>Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time.</i> ” This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on “As-Built” drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. “The contributing drainage area for each outfall should be clearly discernable...” The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read “The name of all receiving water bodies from those MS4 major outfalls identified in (1).”
69	69	11.c.i	The LA Permit Group proposes “non-stormwater outfall-based monitoring program” to be flow based monitoring. Please revise item (4) of 11., c. i. to read “(4) monitoring flow of unidentified or authorized non-stormwater discharges, and...”
70	69	11.c.i.4	“Monitoring of unknown or authorized discharges” “Authorized” discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to “Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located.” It is not know if a discharge is illicit until the investigation is completed.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

72	70	11.d.ii	Please revise the proposed language to “At a minimum, each Permittee/Permittees shall initiate an investigation(s) to identify and locate the source within 48 hours of becoming aware of the suspected illicit discharge.” Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	“Illicit discharges suspected of sanitary sewage... shall be investigated first.” ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the “most toxic or severe threat to the watershed” shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to “If the source of the discharge is found to be authorized under a NPDES permit...” If the discharge is permitted, then it is not “illicit”.
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to “If the source of the illicit discharge has been determined to originate within a Permittee’s jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification.” “Non-stormwater” discharges do not equate to “illicit” discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to “If the source of the suspected illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall...” Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	<p>Please revise the proposed language <i>“the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.”</i> To “the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board.”</p> <p>In the case that an Illicit Discharge is ongoing, then the discharger can be identified and the responsibility to clean up and eliminate the discharge lies with the discharger. Any illicit discharge for which the Permittee has exhausted their Progressive Enforcement Policy should be deferred to the Regional Water Quality Control Board for additional Progressive Enforcement or permitting.</p>
78	71	11.e.i	Please revise the first sentence to “Permittee/Permittees, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days...” The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the “days of completion” from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

80	71	11.f.i	Revise the proposed first sentence to “Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point...” It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71& 72	11.f.ii.1&2	Revise “PIPP” to “Hotline”. The subject of this item is “reporting hotline requirements”.
82	72	11.f.iii	Omit this section. “No Dumping” signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, “The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee.” This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to “Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority.” Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bioretention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	<p>RB staff proposed language requires the permittees to “effectively prohibit non-stormwater discharges into the MS4 and from the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p style="text-align: center;"><i>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges²:</p> <p style="text-align: center;"><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water</i></p>

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

² 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
			<p><i>discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges <i>from</i> the MS4 discussed.</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p>
2	3	III.A.3.b	<p>This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.</p>

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
			We'd suggest that Table "X" be revised to include specific sections in Part V or VI.D that may modify the exempt determination. We'd respectfully request that, based on the Executive Officer's determination of a problem, a reopener clause is added so the Permit may be amended to account for changes exempt/conditionally exempt status.
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

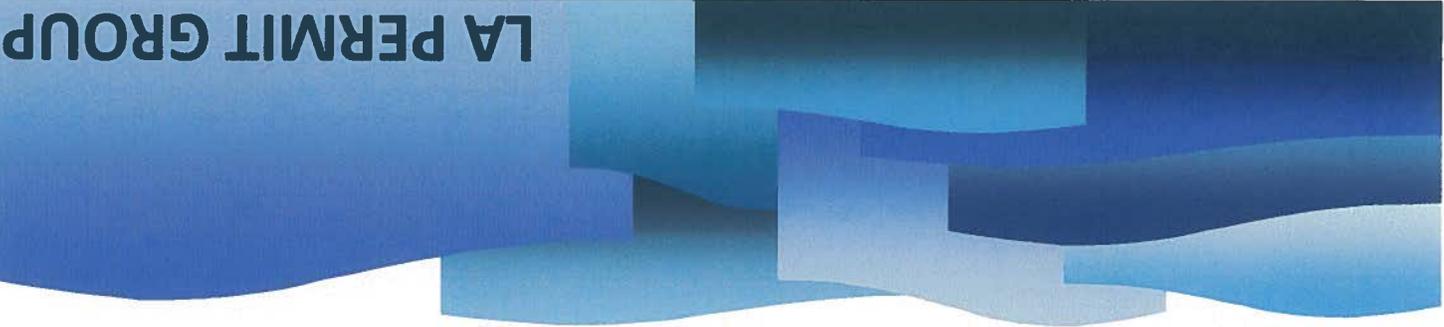
No.	Page	Citation	Comment
			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
15	Table X	General	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDS category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period



July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

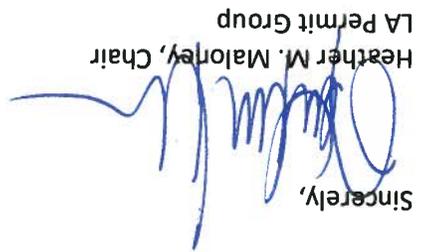
- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

- cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfeld, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit



California Stormwater Quality Association

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal’s decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court’s opinion addressed two key issues for California’s MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive style with a large initial "R" and "B".

Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

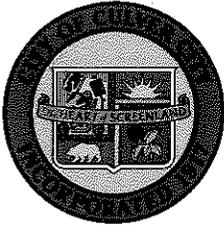
cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

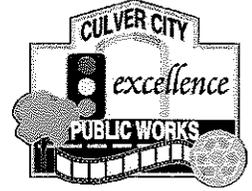
- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



Culver CITY

PUBLIC WORKS DEPARTMENT

9770 Culver Boulevard, Culver City, California 90232



(310) 253-6421

Charles D. Herbertson, P.E., LS
Public Works Director and
City Engineer

Damian Skinner
Environmental Programs and Ops. Manager

FAX (310) 253-6430

July 23, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

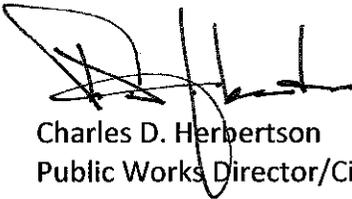
The City of Culver City (City) appreciates the opportunity to provide comments on the subject draft order for the Los Angeles region. The City has actively participated with other municipalities through the Los Angeles Permit Group (LAPG) to understand and comment on the complex provisions of the draft permit. Attached to this letter is the comment letter the LAPG will submit as a whole and which Culver City agrees with and supports. In addition, we would like to highlight a few issues of critical importance to the City of Culver City.

The City did not receive adequate time to review the draft permit in its entirety. The Regional Board released parts of the draft permit and labeled them as staff working proposals, but those sections changed once the entire permit was released. Because of the many interrelationships between the different sections of the permit, it is critical to provide an adequate opportunity to review the permit as a whole. In addition, the City and the LAPG did not receive a response to many of our comments from Regional Board staff so we are unaware of the impact of our efforts to engage in a consensus building process. The City respectfully requests a one-year extension to allow time for a continuing collaborative and iterative process whereby several drafts can be reviewed and subjected to comments, comments can be addressed or responded to and we will

have adequate opportunity to obtain input from City policy makers as the final permit takes shape.

The City recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the State establishing permit provisions that result in the potential of immediate non-compliance for Permittees. For these reasons, the City requests revision of the draft MS4 Permit as described in the letter dated July 23, 2012 from the LAPG and for the reasons stated above, a one-year extension to the permit adoption process.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Herbertson', with a large, stylized flourish on the left side.

Charles D. Herbertson
Public Works Director/City Engineer



City of Diamond Bar

21810 Copley Drive • Diamond Bar, CA 91765-4178

(909) 839-7000 • Fax (909) 861-3117

www.DiamondBarCA.gov

July 19, 2012

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CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

Mr. Ivar Ridgeway
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within
the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Diamond Bar appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit).

The City of Diamond Bar, as a member of the LA Permit Group, has participated in the permit negotiation process and we have had both legal and technical staff representation at meetings with the Regional Board Staff and other member cities. The City of Diamond Bar is wholly supportive of the technical comment letter that is forthcoming from the LA Permit Group.

Specifically, the City of Diamond Bar is concerned with the interpretation of Provision V.A of the Draft MS4 Permit because it appears to contradict the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process.

Ling-Ling Chang
Mayor

Jack Tanaka
Mayor Pro Tem

Ron Everett
Council Member

Carol Herrera
Council Member

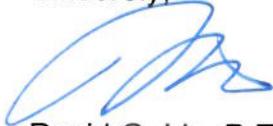
Steve Tye
Council Member

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. However, as can be seen with hundreds of TMDLs across the State, current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Diamond Bar recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe there is no regulatory benefit from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City of Diamond Bar requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve.

Please direct any questions regarding this letter to Mr. Rick Yee, Senior Civil Engineer, at 909.839.7043.

Sincerely,



David G. Liu, P.E.
Director of Public Works/City Engineer

Attachment 1 – CASQA Model Receiving Water Limitations Language

cc: Samuel Unger, Executive Officer

CASQA Proposal for Receiving Water Limitation Provision**D. RECEIVING WATER LIMITATIONS**

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



City of Downey

FUTURE UNLIMITED

July 23, 2012

Ivar Ridgeway
Los Angeles Regional Water Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

**Subject: Comment letter – Tentative NPDES Permit (Draft Order) for
MS4 Dischargers within the Los Angeles County Flood Control District**

The City of Downey (City) takes pride in itself as very proactive in reducing pollutants in storm water runoff. In a recent presentation to the Regional Board, it was mentioned that the city has over 1,000 Low Impact Development (LID) type systems located throughout the City. In fact, in an effort to distinguish itself, Downey was one of the few cities submitting a separate Report of Waste Discharge (ROWD) six months prior to the scheduled expiration of the current permit in 2006 with the purpose of obtaining coverage under a separate and individual MS4 permit. Downey has not requested this ROWD be withdrawn, but nonetheless recognizes the appropriateness of submitting comments at this time; in part as the Regional Board has listed the City as a permittee under the Tentative Permit.

Downey is not a member of the Los Angeles Permit Group (LAPG), but has been following the developments and vetting by some sixty (60) municipalities of that group's comments. Rather than submit many of the same comments, Downey hereby incorporates the comments being submitted to the Regional Board by the LAPG into this letter by reference. Downey would also like to incorporate by reference, the legal comments being submitted separately on behalf of the City of Signal Hill.

Downey further recognizes that the comments being submitted by the LAPG are extensive and that there will only be a very limited amount of time for the Regional Board to review and make the requested modifications to the tentative permit prior to the currently scheduled adoption date of September 7, 2012. The City would therefore like to bring to the attention of the Regional Board several items of importance.

1. The open section that lists the names of the contact person, thus incorporating the names into the MS4 permit is inappropriate as City personnel are very likely to change over the next 5 or more years. Only the City titles and addresses should be listed.
2. Section D.1.b.i (page 56) indicates that all the Minimum Control Measures (MCM) must be implemented within 30 days of the effective date of the permit. This is not realistic given that the permittees are being given six (6) months in which to decide whether to implement the MCMs or follow the Watershed Management Program (WMP) as described separately within the Tentative Permit.
3. During a presentation to the Regional Board earlier this year as part of comments on previous working drafts of the MS4 permit, the City of Downey indicated that eighty-nine (89) percent of their catch basins tributary to the Los Angeles River are now retrofitted with full-capture trash systems. The remaining eleven (11) percent could not be retrofitted due primarily to physical constraints of the catch basins. Section E.5.b.i(2) (118) appears to indicate that cities installing lesser effective partial control devices may be eligible for a determination of full compliance while those cities such as Downey that installed the full capture system would not be. This can and should be remedied by including the partial installation of full-capture devices in combination with institutional control as satisfying this item.
4. The Receiving Water Limitations (RWL) must be revised. This is a critical issue for the City. Under the current wording, any exceedance, whether: (1) under an existing TMDL, (2) listed on the 303d impaired waterbody list but where no TMDL is yet developed, or (3) not listed as an impairment but listed as a water quality standard would subject permittees to RWL requirements. For example, runoff would now be immediately subject to limitations on such "pollutants" as aluminum, sulfates, chloride, etc. If these pollutants were priorities, TMDLs or monitoring would have already be in place; and to the City's knowledge, no outfall monitoring has yet occurred. Cities must be given a reasonable opportunity to determine the current level of these "pollutants", and then develop economically and technically feasible control measures, preferably through an iterative adaptive approach. We understand that several statewide efforts are underway and the Regional Board is urged to review the proposed wording of these efforts and remedy the current deficiencies in the Receiving Waters Limitations wording.

5. As mentioned above, the City has a substantial LID program. Credit should be given to cities, such as Downey, that will have lowered the volume of runoff so that miniscule amounts of runoff that may from time to time exceed water quality standard not be considered violations (Water Quality Standards should be mass-bases as well as concentration-based.)
6. Under the construction provisions for sites over 1 acre. Since the SWPPP program (GCP) is in place and applications can now be electronically filed by contractors and since this is a State program, and therefore the State collects permit and inspection fees, cities should not be responsible for ensuring the SWPPP application process and the increased number of inspections unless the State provides a portion of the fees as reimbursement to cities for the additional costs.
7. Table 8, (Page 33): Under the provision for (LACFCD) Los Angeles County Flood Control District to mandate reporting by potable water suppliers should be amended. LACFCD has no legal mechanism to enforce this provision except where the discharge is to a County owned right of way, which is in only a very small number of cases. It makes much more sense and is consistent with the rest of the permit to require each MS4 permittee to have this requirement. Please consider revising the language accordingly, "Whenever there is a discharge of one acre-foot or more into the MS4, the MS4 Permittee shall require advance notification by the discharger to the MS4 Permittee."
8. Under Section D.7.h.ii.(8), the verification that contractors have obtained various State permits (401, 404, 1600, etc.) should not be the responsibility of the City. As owner/operator of the flood control channels where the actual connections will be made, verification of these permits should be the responsibility the Army Corps of Engineers or the County Flood Control District.
9. Attachment A: Please provide definitions for:

Construction Activity,
Industrial Parks and
Commercial Strip malls
Trash excluders
AMAL and MDAL (page G-13)

10. Item (4) (page 70): this item should be eliminated. It forces an evaluation of green roofs for every project, whether or not a green roof if proposed.

11. Section d.i. (page 80): whereby the Executive Office is to review and approved LID ordinance retroactively punishes cities like Downey that pro-actively initiated LID programs on their own volition. Existing LID programs should be grandfathered in automatically.
12. Section VI.D.7.f (page 84): land clearing for fire protection should not be considered a construction activity.
13. Having submitted its own ROWD, Downey recognized that an outfall monitoring program was going to be an integral part of their individual MS4 permit. However, the new outfall monitoring program as outlined in Attachment E of the tentative MS4 represents an extremely expensive endeavor. This needs to be completely revised in order to make it economically viable. As part of several Los Angeles River, San Gabriel River and Los Cerritos Channel TMDL groups, Downey is facing a shared monitoring costs well into the hundreds of thousands of dollar range. The costs for this outfall monitoring will include: (1) TMDL monitoring, (1) post-construction treatment system evaluation and (3) costs for pyrethroid studies. Even if limited to approximately 20 square miles of tributary areas (HUC-12) the costs are extremely high. Attachment E should be listed as "items that could be included in a monitoring plan" and this program will then be developed over the next several years.
14. As Downey is subject to both the USEPA San Gabriel River Reach 1 Metals TMDL and the USEPA Los Cerritos Channel TMDL, the City would like to complement the Regional Board staff for their effort to allow permittees subject to these USEPA TMDLs to prepare a Watershed Implementation Plan (WIP) in lieu of the Time Schedule Order as originally proposed in the original permit drafts. The City is pleased to see the Regional Board's intent to recognize interim efforts as equating to compliance via these WIPs which are anticipated to be submitted to the Regional Board in 2013. The City is concerned that the final TMDL goals will be strict numeric limits. For the purpose of this MS4 permit, it is requested that the final numeric limits be listed as iterative adaptive goals and that as the final date of the implementation period approaches, the Basin Plan be re-opened to review the progress to date and make a determination at that time whether to establish strict numeric limits or a continuation of the iterative adaptive process.
15. Section E.3.a (page 114): It is not clear from the Tentative Permit whether this was a grammatical oversight or a purposeful intent for cities such as Downey subject to a US EPA TMDL not to be given the option of implementing the MCM (as all other permittees are) in lieu of developing a WMP. For permittees such as Downey which are in multiple TMDL watersheds, it should be clear that

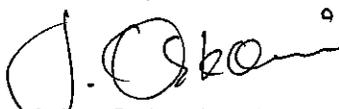
PAGE 5

Management Area Programs established by permittees for US EPA TMDL do not apply to the entire City unless specifically designated as such within the Watershed Management Program.

16. Section III.A.1 (page 26). "- - prohibit non-storm water discharges through the MS4 - -", should be changed to: "- - prohibit non-storm water discharges into the MS4 - -". Leaving the wording as is would require permittees to discern non-exempt discharges within comingle flows for upstream sources outside the jurisdiction of the permittee.
17. Finally, the entire section h.ix (page 103) dealing with sanitary sewers should be omitted. Sanitary sewer system operations and maintenance are already addressed by an existing WDR.

Thank you in advance for consideration of these comments. Please call Louis Atwell of my staff at (562) 622-3398 if you have any questions or comments.

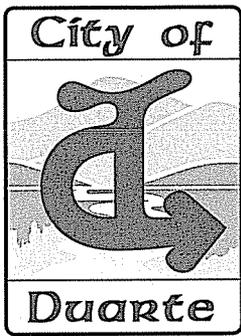
Sincerely,



John Oskoui, P.E.
Director of Public Works

JO:rg

cc: Electronically submitted to:
rpurdy@waterboards.ca.gov
ridgeway@waterboards.ca.gov
LAMS42012@waterboards.ca.gov



City of Duarte

1600 Huntington Drive, Duarte, CA 91010 - (626) 357-7931 - FAX (626) 358-0018

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Duarte is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments and incorporates by reference the letter submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me.

Sincerely,

Darrel George
City Manager

Attachment(s):
Comments LA-MS4 NPDES
Comments LA-MS4 NPDES Attachment E

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is "a" because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall -- not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to "b", see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding "c", as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding "d", this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies "*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*"

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a "numeric" WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board's setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

"Effluent monitoring," according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will

generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶ibid., page 35.

development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond "to" the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase "prior to mixing of either point or non-point source load of contaminants," which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. **The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.**
 - a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only "to" the MS4 makes this issue academic. A permittee's only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.

- a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system

is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.
Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

¹⁰Op. Cit., page 35.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS



City of El Segundo

Public Works Department Stephanie Katsouleas, Director

July 23, 2012

Elected Officials:

Carl Jacobson,
Mayor
Suzanne Fuentes,
Mayor Pro Tem
Bill Fisher,
Council Member
Dave Atkinson,
Council Member
Marie Fellhauer,
Council Member
Tracy Weaver,
City Clerk
Chris Powell,
City Treasurer

Appointed Officials:

Greg Carpenter,
City Manager
Mark D. Hensley,
City Attorney

Department Directors:

Deborah Cullen,
Finance/Human Resources
Kevin Smith,
Fire Chief
Debra Brighton,
Library Services
Sam Lee,
Planning and
Building Safety
Mitch Tavera,
Police Chief
Stephanie Katsouleas,
Public Works
Robert Cummings,
Recreation & Parks

www.elsegundo.org

Mr. Ivar Ridgeway
Ms. Renee Purdy
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Sent Via E-mail to LAMS42012@waterboards.ca.gov

COMMENTS ON THE DRAFT LOS ANGELES COUNTY MS4 PERMIT CITY OF EL SEGUNDO

Dear Mr. Ridegway and Ms. Purdy:

As a member of the LA Permit Group, the City of El Segundo joins in the comments submitted to your office by that organization. Those comments are incorporated herein by reference. In addition, the City of El Segundo is providing the following additional comments on the Los Angeles County MS4 Permit.

1. Please update the Facility/Discharger Information for the City of El Segundo(WDID# 4B190170001). Change the Facility Contact to: Stephanie Katsouleas, Public Works Director, skatsouleas@elsegundo.org. The Mailing Address for the City of El Segundo is still 350 Main Street, El Segundo, CA 90245 and my contact phone number should be (310) 524-2356.
2. The timelines to develop new watershed management and monitoring programs are too short. The Santa Monica Bay and Dominguez Channel Watershed Agencies have been working together for several years on the bacteria TMDLs. Based on this past activity; we know a lot of lead time is required for the governing bodies to execute new Memorandums of Agreement. This is particularly an issue because the agencies include the State of California (Caltrans), Los Angeles County, and City of Los Angeles, as well many smaller cities. In addition to entering into MOA's the obligations may require securing funding, hiring consultants, etc. All of these activities take time and the timelines in the permit are short.

3. The requirements of the Outfall Based Monitoring are onerous. The Permit requires that “Storm water discharges from the MS4 shall be monitored at outfalls, manholes or in channels at the Permittee’s jurisdictional boundary.” There are no open channels or water bodies. The Permit does not provide a definition of “outfall.” However, the Outfall Based Monitoring section uses this term to describe a program of sampling storm water at the entry and exit from a jurisdictional boundary. “Outfall” is not simply being used as a term to describe a location where a pipe discharges to an open channel or water body.
4. The Receiving Water Limitations Language must be amended. As written, the City can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires cities to implement an iterative process to improve BMPS to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.

Previously, municipal stormwater permittees had understood that the receiving water limitations language in conjunction with Board Policy (WQ 99-05) established an iterative management approach *as a basis for permit compliance*. However, since the permit language does not actually say that the permittee is in compliance while engaging in the iterative management process, a federal court has determined that the permit violation still exists while the permittee is taking actions to address the problem.

On July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found that the Defendant County had violated the receiving water limitations, despite its compliance with the iterative management process. The Court said that the obligation to not cause or contribute to a violation of receiving water limitations is separate and distinct from the obligation to participate in the iterative management process. Thus, a municipality is in violation of the permit if its discharges cause or contribute to an exceedance of a water quality standard, even while improving its management practices and control measures. This is a fundamental change in interpretation of policy. The Court’s decision also contrasts sharply with the Board’s own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated the collective understanding that a violation of the permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm.

An MS4 permittee should not automatically be in violation of the permit if there is an exceedance; the exceedance may not have even been caused from an MS4 discharge. The permit must acknowledge that MS4 discharges are not the only source of pollutants in the water and regulate accordingly. If monitoring demonstrates that a particular compliance strategy is not working through no fault of the discharger, then the discharger must have time to identify and implement a new strategy before being held liable for water quality alterations that may be beyond its control.

To address this problem, the City recommends that the proposed CASQA language submitted by the LA Permit Group be used in lieu of the current language.

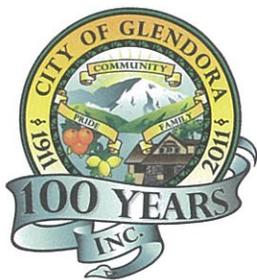
5. The final TMDL Waste Load Allocations (WLAs) do not allow compliance to be demonstrated through implementation of BMPS that provide reasonable assurances that WLAs are met. Implementing the City's storm water control measures will meet interim guidelines, which are often based on the number and thoroughness of implementation measures. But final TMDL limits require compliance with strict numerical water quality standards (effluent limits) either at the end of the pipe or in receiving waters when final compliance is due. For many reasons, these will be difficult to meet. Also, the permit proposes that if the final compliance period has already passed when the permit is adopted, that the City must submit a Time Schedule Order (TSO) setting out a compliance plan. Similar to the iterative process described above, submittal of a TSO and implementing a compliance plan does not shield the City from citizen suits, and may increase the risk of legal liability *while the City is implementing its compliance schedule*. This is a problem that needs to be addressed.
6. Lastly, while we appreciate the access and opportunity that Board staff provided to the permittees during the time that this draft permit was under development, and the opportunity to provide input, significant issues remain unresolved and many more have become evident now that this draft permit has been released in its entirety. A forty-five day review period for a 500-page permit is hardly adequate and has not provided us enough time to fully review and digest all the interrelated parts of this permit, to consider the implications and costs of the proposal, and provide complete and comprehensive comments.

We appreciate the opportunity to provide these comments and urge the Regional Board to review the comments provided by all of the permittees, issue a revised draft permit, and accept additional comments on the revised draft before adopting a final permit.

Sincerely,

Stephanie Katsouleas
Director of Public Works

Ec: Greg Carpenter, City Manager
Mark Hensley, City Attorney
Lauren Langer, Jenkins and Hogan



CITY OF GLENDORA CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Glendora is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in blue ink that reads 'J.L. Burke'.

Jerry L. Burke, P.E.
Assistant Director of Public Works/City Engineer

Attachment: Comments

Cc: David A. Davies, Director of Public Works
File

1. Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

*explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.*¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: *we will*

generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

*development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”*⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

- a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA

pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only “to” the MS4 makes this issue academic. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. **The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.**
 - a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost

⁹ *NPDES Permit Writers' Manual*, September, 2010, page 5-40.

to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an

¹⁰Op. Cit., page 35.

amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations, and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

With regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS



City of Hidden Hills

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July 20, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
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Dear Mr. Ridgeway:

The City of Hidden Hills ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001) ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and supports. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

The City's comment letter regarding the Permit is organized into two main parts. Part I contains the City's legal comments. Part II contains the City's technical comments. On behalf of the City of Hidden Hills, we hereby submit the following initial comments on the Permit:

I. LEGAL COMMENTS

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate

strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See* Fact Sheet at pp. F-35-38. These positions are incompatible and render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City’s Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has removed the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board’s discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA’s regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.,* Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis*

Taxpayers Assoc. v. City of Salinas, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee's discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual

boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermittees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermittees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include "[e]conomic considerations" with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. *See* Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermittees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth

in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

II. TECHNICAL COMMENTS

1. Watershed Management Programs

The City supports the Regional Board's approach to address high priority water quality issues through the development and implementation of Watershed Management Programs. However, we have concerns with the language contained in Part VI.C of the Permit. One of our biggest concerns is the proposed timeline for developing Watershed Management Programs. Agencies wishing to participate in Watershed Management Programs would have only one (1) year to develop a comprehensive Watershed Management Program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary City Council approvals.

Part VI.C of the Permit does not appear to provide cities wishing to participate in a Watershed Management Program the option of developing their own programs, outside of the Watershed Management Program, to remain consistent with the requirements of the Permit. For example, a watershed group may develop a Watershed Management Program for TMDL and Monitoring purposes, and choose to implement the Minimum Control Measures as currently prescribed by the Permit. This may not be appropriate for all cities participating in the Watershed Management Program. Individual permittees, when participating in a Watershed Management Program, should be able to choose which elements of the Program they will participate in and which elements they will opt out of, preferring to comply with those elements as stated in the Permit. The City therefore requests that the Permit include clarifying language enabling individual permittees to participate in certain elements of the Watershed Management Program while providing the individual permittees the flexibility to otherwise comply, on their own, with the Permit.

2. Storm Water Management Program Minimum Control Measures

The City is concerned that the timelines for implementation of the Minimum Control Measures (MCMs) will not provide an adequate timeframe in which to implement the new and enhanced Permit conditions. Specifically, Permit Part D.1.b.i. states: "Unless otherwise noted in Part VI.D, each Permittee shall ensure implementation of the requirements contained in Part VI.D within thirty (30) days after the effective date of the Order." The City respectfully requests that the timelines for implementation be extended to one hundred eighty (180) days after the effective date of the Order, to allow permittees the necessary time to develop new programs and plans and enhance existing programs as prescribed in the Permit.

3. Development Construction Program

The Permit will require projects of one (1) acre or greater to prepare an Erosion and Sediment Control Plan ("ESCP"). It is our understanding that the ESCP must include the same elements of a Stormwater Pollution Prevention Plan ("SWPPP"). This Permit requirement essentially places the burden of enforcement of the State Construction General Permit on the municipal permittees.

The State Construction General Permit already requires construction projects to prepare and submit a SWPPP to the State Water Resources Control Board for review and approval. The City

appreciates the language indicating that SWPPPs prepared in accordance with the requirements of the Constructional General Permit can be submitted in lieu of an ESCP. However, the burden of review and approval of SWPPPs is effectively shifted to the City with the addition of this requirement. The City lacks the resources necessary to review, approve, and enforce the State Construction General Permit.

Part VI.D.7.h.ii(9) requires permittees to develop and implement a checklist to be used to conduct and document review of each ESCP or SWPPP within thirty (30) days of the Permit's adoption. Currently there is no accepted standardized SWPPP review checklist for the State Construction General Permit. The burden of developing such a checklist falls solely to the permittees. In addition, the City will be required to allocate already limited resources to perform the mandatory construction site inspections, which represent a two hundred percent (200%) increase in the number of inspections required for sites greater than one (1) acre.

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Cherie L. Paglia
City Manager

CLP/ckl

cc: Roxanne Diaz, City Attorney



CITY OF INGLEWOOD

Public Works Department



HARRY FRISBY, JR.
Acting Public Works Director

July 23, 2012

Mr. Ivar Ridgeway
Los Angeles Regional Water Resources Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA electronic submittal to: LAMS42012@waterboards.ca.gov
iridgeway@waterboards.ca.gov
rpurdy@waterboards.ca.gov

Subject: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Discharges within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Inglewood (City) appreciates the opportunity to provide comments on the Draft NPDES Permit (Draft Order) for MS4 Discharges within the Los Angeles County Flood Control District. The City has actively participated with the LA Permit Group in efforts to promote a constructive collaboration between the other municipalities and also the Los Angeles Regional Water Quality Control Board (LARWQCB). The City in addition to these comments is in support of the detailed comments submitted by the LA Permit Group.

As stated in letter dated July 10, 2012 (incorporated in this letter as attached), the City feels that the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns associated with the draft order. The City supports the need for regulations that are developed reasonably and can be complied with while protecting water quality in a cost-effective and science-based matter. The City feels that the draft order may place permittees in a vulnerable position for not being in immediate compliance with water quality standards. It is imperative that more time be given to review the permit and develop alternatives to the issues found in this draft order. In light of the restricted time period to comment given, the City has put together comments to address the most pertinent issues.

In addition to the comments that follow and are attached, please note that the contact information for the City of Inglewood as noted on page 4 of the draft order has changed. The contact information should be changed as follows:

Mailing Address: 1 W. Manchester Blvd, 3rd Floor
Public Works Department
Inglewood, CA 90301
Facility Contact: Lauren Amimoto, Senior Administrative Analyst

One W Manchester Boulevard • Inglewood, CA • 90301 • Phone (310) 412-5333 • Fax (310) 412-5552 •
www.cityofinglewood.org

Discharge Prohibitions:

The City, being a potable water distribution system and an MS4 is concerned with this section and feels that some clarifications need to be addressed. The notification and monitoring requirements are unclear as to whether they apply to any discharge or if they apply to a threshold of 1 acre-foot. The City believes that if these requirements apply to all discharges this would be excessive and a waste of City resources. The City believes that this section should be rewritten to address the issues that may arise for cities that own and operate a potable water distribution system and are also a MS4 permittee.

Receiving Water Limitations:

The City feels that the Receiving Water Limitation (RWL) language in the draft order is likely to create a liability to the City that is unnecessary and counterproductive. The City feels that if it is engaging in a good faith effort to implement the iterative process to correct any harm while diligently implementing its stormwater program then it should not be subject to non-compliance and open to litigation because of the proposed language. Especially in light of the United States Court of Appeals for the Ninth Circuit issued opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard. To address this issue the City is recommending that the CASQA RWL language (attached) be used instead of the controversial proposed language which creates counterproductive liability for the cities who are diligently implementing stormwater programs. The City believes it may be exposed to considerable vulnerability even though it has little control over the sources of pollutants that may create the vulnerability. Even when an adaptive management approach is taken, under the current language, the City may be exposed to enforcement action and third party lawsuits. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though they were implementing a comprehensive iterative process with specific pollutant load reduction plans. RWL language is a critical issue and must be modified to allow for an iterative/adaptive approach to meet water quality standards.

Total Maximum Daily Loads (TMDLs):

The City is concerned with the incorporation of the multiple TMDLs into the draft order. These TMDLs were developed based on the information available at the time, not the best information to solve the problems at hand. The TMDLs were developed on the understanding that there would be monitoring, special studies, and other information gathered to redefine the TMDLs and addressed through a TMDL reopener. Anticipated reopeners, like the Santa Monica Bay Beaches TMDL, have not been updated to address the evidence that was presented. The sophistication of the TMDLs varies widely along with the financial burden of complying with them. The City does not believe that the use of numeric limits should be used for final waste load allocations (WLAs), and that WLAs should be incorporated as non-numeric effluent limitations instead. WQBELS should be expressed as Best Management Practices (BMPs) to abate the discharge of pollutants. Once BMPs are implemented then monitoring data can be used to determine the effectiveness of the BMPs and appropriate adjustments can be made if the BMPs are not effective. The compliance option of implementing actions or BMPs in an adaptive iterative approach consistent with the Watershed Management Program should be included for the interim and final WLAs. If this compliance option of BMP implementation is not included and strict numeric limits are required for final WLAs, then, at the specified compliance date, no matter how much the permittee has done, how much the permittee has spent, and how close to complying with the numeric values, no matter if the

sources are in the permittees's control or not, the permittee may be considered out of compliance with the permit requirements and open to enforcement action and third party litigation.

In TMDLs where the compliance date has already passed, the proposed use of Time Schedule Orders seems to put permittees in immediate non-compliance and exposure to third party lawsuits. The City strongly believes that an adaptive management approach where TMDL reopeners are used to consider new data and other technical information to modify the TMDLs, including whether the TMDL schedule is appropriate, is the most straightforward way to address past due TMDLs. The LARWQCB should adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until more scientific information is gathered and the TMDLs are reconsidered in light of information that was not available at the time when the TMDL was developed.

The four compliance options for both interim and final WLAs should be (1) Implement Actions/BMPs, (2) Compliance at the outfall, (3) Compliance in the receiving water, (4) No direct discharges.

Monitoring:

The proposed monitoring program seems to significantly increase from the current monitoring efforts. Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted 2 days following a storm event instead of during a storm event. Regarding the regional studies, the City believes that these studies should be conducted by the Regional or State Board and not at an individual City level. Toxicity monitoring should be conducted at the receiving water and not the outfalls, but first it should be determined if toxicity is in fact an issue in the receiving waters. Conducting unnecessary monitoring would be costly and waste limited City resources. Insufficient time has been allotted to prepare the Coordinated Integrated Monitoring Plan (CIMP). Permittee should be allowed at least 12 months to submit a Memorandum of Agreement to participate in a CIMP and at least 24 months to submit the complete CIMP.

Minimum Control Measures:

The LARWQCB should develop a timeline for implementation and phasing in of the Minimum Control Measures requirements. A 12 month time schedule is recommended in order to transition from the current efforts to the new MCM requirements. The draft order seems to shift the States responsibilities regarding the State General Permits for Construction and Industrial Activities from the State to the municipalities. These elements that shift State responsibilities to the municipalities should be eliminated. Requiring the permittees to maintain a database that overlaps with the States SMARTS database is repetitive and adds additional costs to permittees that is unnecessary. Requiring the quantification of soil loss is also repetitive with the Construction General Permit and will add additional costs to permittee as well.

The City suggests that a technical guidance manual should be provided for implementing the suggested Low Impact Development (LID) provisions.

A number of concerns arise with the New Development provisions of the MCM section in the draft order. Requiring developers to choose between two equivalent design volume criteria, being, the 0.75 inch storm or the 85th percentile 24 hour storm- whichever is greater, makes little sense when these two design criteria were judged to be equivalent. This adds additional costs to any project that are unnecessary. The alternative compliance option of offsite mitigation is highly unlikely to be chosen because of the requirements for treating project site runoff to the levels in Table 11 in addition to being equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would have accomplished on the project site if being able to retain the load onsite originally. This is unfair, we recommend that the developer be required to remove only the pollutant loads that would have been removed at

the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential. The section regarding post

Construction BMPs should be revised to reflect the developer's site pollutant of concern and the corresponding top performing BMPs that can meet the benchmarks given.

Permittees are being required to track and inspect post construction BMPs including LID measures. This seems like a tedious task for City staff as it would require significant staff time (ex. Plan reviews, purchase of a system to store data, data entry, letter preparation and enforcement). If permittees are required to inspect every LID BMP implemented, then during wet weather it would be unreasonable and cost prohibitive for the City to perform that many inspections. Tracking and inspection of BMPs should be limited only to conventional BMPs (ex. Detention basins, wetlands, etc.)

Attachment H which provides design specifications for biofiltration and bioretention BMPs should be optional. It is more productive for a performance standard to be required and the City will develop design specifications to meet the standard.

The requirement requires each permittee to install additional trash BMPs regardless of where the area is subject to a trash TMDL or not makes little sense. If a TMDL has not been established for that area then the purpose for additional trash management is unclear. The MCM already requires prioritization, cleaning, and inspection of catch basins as well as street sweeping and other management control measures to address trash.

Watershed Management Programs:

A big concern for the City with the Watershed Management Program section is the draft order's proposed timeline for developing the watershed management programs. The draft order only allows 1 year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. A time period of at least 24 months should be allowed to develop a draft plan that is implementable.

The draft order is silent on the issue of sources of pollutants outside the authority of the permittees control (ex. Aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.) Permittees should be allowed to demonstrate that some sources are outside the permittees control and they are not responsible for managing or abating those sources. Watershed management programs and the reasonable assurance analysis should be able to be applied for TMDL compliance purposes.

Cost Implications to the City

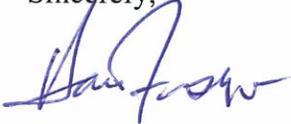
The draft order requires municipalities to exercise their authority to secure fiscal resources necessary to meet all the requirements of the permit. However, we have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote; so, this is an item that is not under direct control of the municipalities – the Permit language should reflect this. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors, health, safety, quality of life and clean water need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge that the permit provisions are developed on conditions based on a reasonable timeframe in balance with the existing economy, fiscal resources available, and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The economic implications of the many proposed permit requirements are of critical importance. The cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and \$42 billion. With these types of economic implications, it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.

The City is concerned with the issue of whether these permit requirements constitute an unfunded mandate claim and believes that this issue should be addressed.

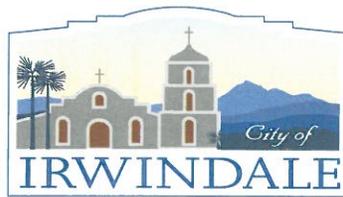
In closing the City thanks the LARWQCB for the opportunity to comment on the draft order and looks forward to discussing our comments and exploring alternative approaches. We request that the LARWQCB provides another revised draft tentative order with an additional review period of at least 180 days to discuss and review the full document. It is imperative that ample time be granted to review the entire document to better understand the relationships with the various provisions. Please feel free to contact Lauren Amimoto (310) 412-5192 lamimoto@cityofinglewood.org if you have any questions or require clarification regarding these comments.

Sincerely,



Harry Frisby, Jr.
Acting Director of Public Works

CC: Artie Fields, City Manager
Cal Saunders, City Attorney
Jeffrey Lewis, Assistant City Attorney
Barmeshwar Rai, Principal Civil Engineer
Lauren Amimoto, Senior Administrative Analyst



July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

For your consideration, the City of Irwindale is pleased to submit the attached comments regarding Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to compliment and address more specifically the issues raised in the LASP group letter. Additionally, the City's comment letter contains other issues not addressed in the LASP group letter.

We thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me at 626/430-2211.

Sincerely,

Loretta Corpis
Management Analyst



**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations, and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

With regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

1. Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

*explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.*¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made

it clear that: we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

3. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not, as the tentative order's fact sheet asserts, include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations, and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

With regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

1. Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

*explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.*¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: *we will*

generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

*development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”*⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

- a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA

pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only “to” the MS4 makes this issue academic. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. **The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.**
 - a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost

⁹ *NPDES Permit Writers' Manual*, September, 2010, page 5-40.

to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an

¹⁰Op. Cit., page 35.

amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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IN REPLY PLEASE

REFER TO FILE: **WM-9**

July 23, 2012

Mr. Samuel Unger, P.E., Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr. Ivar Ridgeway

Dear Mr. Unger:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT – COMMENTS ON THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE COUNTY OF LOS ANGELES

The Los Angeles County Flood Control District (LACFCD) appreciates the opportunity to comment on the draft tentative Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Draft Permit) and supporting documents released on June 6, 2012. The enclosed comments are being submitted to meet the submission deadline of July 23, 2012, as required in the Notice for Public Comment. We further incorporate by reference the comments submitted by the County of Los Angeles.

The LACFCD has implemented many programs to improve stormwater and urban runoff quality in compliance with current MS4 Permit. These will continue to be implemented under the new MS4 Permit. The LACFCD is committed to improving the health of our water bodies. Our goal is to seek a permit that will allow permittees the flexibility to work together and focus their efforts on identified pollutants so that available resources are used most effectively. To that end, we not only offer the enclosed comments to the Draft Permit but also offer an alternative approach to compliance for consideration by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board).

Draft Permit

Since the start of the permit renewal process in May 2011, Regional Board staff has expressed a willingness to work with stakeholders. However, permittees were not advised of the full scope of the proposed permit terms until the issuance of the full draft, and then were given only 45 days to comment. It is our strong belief that the 45-day public comment period does not provide sufficient time to conduct a thorough review of a highly complex permit over 500 pages long. Many crucial issues in the Draft Permit remain unresolved. The key issue, as explained in detail in the enclosed comments, is that the Draft Permit contains receiving water limitations language that essentially renders compliance impossible. The Regional Board cannot legally adopt a permit that permittees cannot comply with.

We believe that given sufficient time, this issue as well as most, if not all, issues can be resolved, avoiding the need to address them at the hearing. To address this and other critical issues in the Draft Permit, the LACFCD would like the opportunity to work with staff to develop creative solutions to address concerns of all stakeholders, including Regional Board members and the environmental community.

We also urge the Regional Board to postpone adoption of the Draft Permit in light of the case pending in front of the U.S. Supreme Court, *LACFCD v. Natural Resources Defense Council*. We expect that the U.S. Supreme Court will hear oral arguments in this matter in early December 2012. As the Regional Board is aware, the ruling in the case could clarify the scope of this permit. The Regional Board should not be adopting a new permit while there is uncertainty over it. There is no pending need for the Regional Board to act precipitously prior to the U.S. Supreme Court's hearing, which is only 90 to 120 days from the currently scheduled date for the consideration of the permit.

For these reasons, we request that the Regional Board extend the current public comment period by 90 days to allow the parties to fully comment on the Draft Permit's provisions. We further request that, after the first period of public comment, the Regional Board issue a second Draft Permit and reopen public comment on that second Draft Permit for 60 days. This will allow the permittees and the public to be advised of the Regional Board staff's position with respect to the initial comments made and to respond to any proposed revisions in light of those initial comments. It will also allow the parties additional time to work with staff in an attempt to resolve the outstanding issues that currently exist.

Alternative Approach

With the recent release of the Draft Permit, we see an opportunity to evolve current and traditional thinking. This permit can change the way this region thinks about the MS4. One of the biggest obstacles to efficient and cost-effective stormwater discharge management is the fact that the MS4 is designed to provide flood protection by conveying as much water away from urbanized, developed areas into receiving waters. The traditional design of the MS4 has created a situation where pollutants must be prevented at the source, treated at the “end of pipe,” or must otherwise be diluted before reaching receiving waters. Under this system, pollutants that cannot or are not prevented at the source become an immediate problem for those charged with managing water quality in the MS4. Once pollutants enter the system, permittees may have no control over the journey the pollutants take and whether the pollutants may be addressed before reaching the receiving water. In addition, once pollutants enter the system, it may be impossible to determine their source. Monitoring, therefore, serves only to highlight the fact of a potential discharge and offers no guidance for preventing discharges in the future.

To date, the Water Boards have addressed receiving waters limitations through a combination of a prohibition on discharges and an iterative process to assist permittees. However, we believe that the current approach does little to assist permittees in truly addressing water quality by attacking discharges on a more site-specific basis. The end result is that monitoring is used to punish, rather than encourage, permittees to identify and address problems.

The current Draft Permit looks to old methods of pollutant control and is based upon a punitive, not incentive, mentality. We would like to see a permit that offers solutions to control the discharge of pollutants, not one that merely imposes consequences for exceedances of water quality standards. We hope that staff will allow us time to suggest a more regional approach towards MS4 management and pollutant prevention. We believe that incorporating such an alternative into this permit will increase stormwater management and reuse and thereby will meet numerous goals beyond improving water quality. Such an approach can increase water supply, protect resources downstream of the MS4, reduce treatment costs, and encourage permittees to address discharges both at the source and before they exit the MS4.

At the outset, let us be clear that we have no intention of eliminating TMDL requirements or the Receiving Water Limitations (RWL) language. However, we believe there is room to allow for an alternative track to compliance with water quality standards that will complement the current Best Management Practice-based iterative process.

Just as the Regional Board has looked to the development community to implement Low-Impact Development (LID) management methods to reduce runoff, we believe that permittees can be incentivized to better utilize stormwater reuse to reduce runoff and treat pollutants before they are discharged into receiving waters. The next MS4 Permit offers an opportunity to guide municipal stormwater permittees towards a program of increased water quality and increased stormwater reuse opportunities as an alternative method to the traditional iterative RWL approach. However, it is not enough to simply encourage permittees to do so. In order to bring together the expertise, funding, and cooperation of the many local agencies required to implement a regional plan, the Regional Board must offer permittees the opportunity to identify and implement solutions for both private and public development.

As the Regional Board is aware, the Southern California Water Committee Storm Water Task Force, of which the Flood Control District is a leading member, has issued a white paper on stormwater capture opportunities and how they might be implemented through municipal stormwater permits. One focus of the white paper is an examination of the advantages and disadvantages of having permittees explore two complementary strategies to manage stormwater, using onsite LID as well as regional stormwater capture and infiltration. Permittees should be encouraged to design facilities to accept stormwater flows from proposed developments as well as existing developments and to locate them in areas that maximize water supply benefits.

The approach we advocate is consistent with efforts already underway within the region through local agencies and nongovernmental organizations. For example, nongovernmental organizations are working to identify areas lacking open space, where public lands could be used to effectively capture and treat polluted runoff. Those areas are converted into parks, habitat, and other recreation lands, which use soil and plants to capture and naturally filter and clean polluted runoff through. The end result benefits the region in numerous ways. Urban communities, which are often "park-poor," gain open space, parks, and wild land habitat. Municipalities achieve compliance with Regional Board requirements, and at the same time, the cleaned runoff can be stored for reuse, thereby recharging water supply for a region that heavily depends upon groundwater pumping. The LACFCD, together with the City of Los Angeles, constructed the award-winning Sun Valley Park Infiltration Project. The project resolved chronic flooding in a neighborhood by capturing stormwater and infiltrating it into the groundwater through infiltration basins constructed in a local park. This project resolved local flooding, improved water quality, increased the local water supply, and improved recreational amenities in the park.

Projects such as those described above can provide permittees a roadmap to better manage their stormwater runoff in a way that delivers many beneficial and tangible results. Working cooperatively, permittees, the Regional Board, and affected communities could expand this concept into areas that contribute various constituents of concern into coastal watersheds and other receiving waters. Stormwater management tools such as bioretention and infiltration can address many constituents that are already subject to TMDLs and other requirements, providing a single solution to many problems, rather than a constituent-by-constituent approach. This regional approach can also address those priority pollutants that are not currently covered by TMDLs.

By using public lands, in addition to LID on private development, permittees can capture and treat a much higher volume of runoff. The technology can also be applied to public roadways, which are a chronic contributor of various constituents of concern (including metals) to receiving waters. By including this type of approach within the MS4 Permit, the Regional Board will encourage permittees to adopt regional solutions to address their contributions to water quality problems.

In addition, as the Regional Board is aware, the LACFCD has an extensive history of stormwater infiltration through its extensive network of spreading grounds. For almost 100 years, spreading grounds throughout the region serve to replenish groundwater, which provides one-third of our local water supply.

Given the work performed by the LACFCD, the Southern California Water Committee Storm Water Task Force, and others, to date, we believe that a regional approach should be incorporated into the MS4 Permit and are prepared to work with staff to craft requirements to effect this alternative approach to meeting effluent limitations for receiving water requirements. We hope that staff will allow us the opportunity to do so. Although we are requesting additional time to develop the details, we offer some initial concepts.

As mentioned earlier, we have no intention of eliminating TMDL requirements or the RWL language. However, we suggest that the next Draft Permit include an alternative requirement in the RWL section that would set forth a procedure for permittees to develop and implement a stormwater infiltration and reuse program as a path to compliance. We envision an approach similar to the LID Technical Guidance Manual required in the current Ventura MS4. That is, the permit would allow participating permittees to develop a stormwater infiltration and reuse manual within 18 months of permit adoption. More extensive monitoring would allow permittees to set Numeric Action Levels for pollutants of concern, which, in turn, would drive project prioritization. The program and manual would be subject to the Executive Officer's approval. Once implementation of the program is complete, the permittee will be deemed in full compliance with the RWL section requirements.

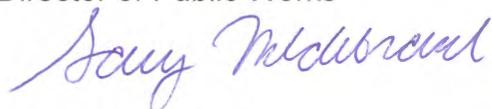
Mr. Samuel Unger
July 23, 2012
Page 6

Thus, we see the potential for a two-track road to compliance with water quality standards. Permittees who choose to continue to follow the current iterative process may do so with the additional requirements set by TMDLs. But Permittees who believe that a more effective method exists to reduce massive amounts of pollutant loads by simply reducing the amount of runoff will be encouraged to implement stormwater reuse projects. Some permittees, together with others in the water supply community, are willing to invest the substantial financial resources necessary to monitor, study, and implement a regional stormwater recharge/reuse plan. However, permittees and Regional Board staff need time to work together to determine how such a program may exist within the framework of the currently proposed MS4 Permit. The LACFCD believes that allowing permittees to develop and implement stormwater infiltration and reuse as a path to compliance would go further to address water quality problems within the MS4 than the region has been able to achieve under the current iterative process. We also believe that in a time of limited resources, it makes sense to increase the reuse of natural resources while we carefully invest and prioritize our limited financial resources. We look forward to working with the Regional Board to find a way to effect such a program on such a revolutionary scale.

If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works



GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

FW:jtz

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Enc.

cc: County Counsel (Judith Fries)

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
1	Request for Extension of Time in Which to Submit Comments and to Continue the Hearing		<p>The LACFCD requests that the current public comment period be extended by 90 days to allow the parties to fully comment on the draft Permit’s provisions. We further request that, after that period of public comment, the Regional Board issue a second draft, tentative Permit and reopen public comment on that second draft Permit for 60 days. The hearing on the Permit can occur 30 to 60 days after comments are submitted on the second draft, or at another time as the Regional Board finds appropriate.</p> <p>This request is made because the 45 day period that has been currently given to the Permittees has been inadequate. This request is also made because the Regional Board should not conduct a hearing on a new permit while a case that could directly impact the scope of the new Permit, <i>Los Angeles County Flood Control District v. Natural Resources Defense Council</i>, is pending before the United States Supreme Court.</p> <p>First, the current 45 day period that has been provided for comments on the draft Permit is grossly inadequate, such that it amounts to a violation of due process. The draft Permit and its accompanying documents are over 500 pages long. The draft Permit is highly complex, requiring extensive analysis of the obligations it imposes. The proposed Permit will impose significant costs on the Permittees, costs which must be fully analyzed and considered. Although Regional Board staff held some workshops on permit proposal, the LACFCD had no knowledge of the Permit’s definitive terms until it was issued on June 6, 2012, and its issuance was the first time a complete permit, rather than merely proposed portions subject to revision, was issued to the Permittees and the public.</p> <p>As a public agency with a responsibility to protect the public fiscal resources, the LACFCD must fully consider all aspects of the draft Permit and consult with many different departments before providing a full response. The 45 day period does not provide sufficient time for the LACFCD to do so. It also does not allow the LACFCD to adequately prepare and submit its evidence on the duties and costs proposed under the Permit.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
1 (cont.)	Request for Extension of Time in Which to Submit Comments and to Continue the Hearing		<p>Second, there is currently pending in the United States Supreme Court the case of <i>Los Angeles County Flood Control District v. Natural Resources Defense Council</i>. We expect that the Supreme Court will hear oral arguments in this matter in early December 2012. As the Regional Board is aware, the ruling in the case could clarify the reach of the Permit. The Regional Board should not be adopting a new permit while there is a cloud over hanging it. There is no pending need for the Board to act precipitously prior to the Supreme Court's hearing which is only 90 to 120 days from the currently scheduled date for the consideration of the Permit.</p> <p>For these reasons, we request that the Regional Board extend the current public comment period by an additional 90 days, issue of a second draft permit for public comment, and hold the hearing on the draft Permit be held 30 to 60 days after close of the comments on the second tentative draft, or at another time as the Regional Board finds appropriate.</p>
2	Incorporation of Previous Comments		To the extent that they have not been incorporated, the LACFCD reiterates and incorporates by reference our comments submitted on February 9, 2012, April 12, 2012, April 18, 2012, and May 14, 2012 (see Exhibits A, B, C, D, and O).
3	Incorporation of County of Los Angeles Comments		We incorporate by reference the comments submitted by the County of Los Angeles.

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
4	LACFCD Permit		<p>The LACFCD has submitted a Report of Waste Discharge requesting an individual MS4 permit. Placing the LACFCD in a combined permit without its consent is unlawful. The Regional Board has no discretion to issue a combined permit over an applicant’s objection.</p> <p>The Clean Water Act provides that permits for discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. 33 U.S.C. § 1342(p)(3)(B)(i). The federal regulations implementing the Act similarly provide that permits for stormwater discharges can be issued either through “one system-wide permit” or through “distinct permits,” including for “individual discharges from municipal separate storm sewers within the system.” 40 C.F.R. § 122.26(a)(3)(ii).</p> <p>The draft Permit states that the Regional Water Board has “discretion as the permitting authority” to determine whether to issue a system-wide permit or individual permit. This position is legally erroneous. The Regional Board cannot require a permittee to participate in a system-wide permit over the Permittee’s objection. Pursuant to 40 C.F.R. § 122.26(a)(3)(iii), the operator of a municipal separate storm sewer may either participate in a joint application with other operators or “[s]ubmit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.” 40 C.F.R. § 122.26(a)(3)(iii)(B). Thus, the federal MS4 regulations give an individual municipality or public entity operating a municipal separate storm sewer the right to obtain an individual stormwater permit. The regulations do not authorize the Regional Water Board to issue a permit for which a municipality or entity has not applied and over their objection.</p> <p>Additionally, the draft Permit states that the Regional Water Board is issuing a system-wide permit and justifies its actions on that finding. The finding, however, is factually erroneous. The Board is not issuing a system-wide permit. The Regional Water Board has specifically excluded the City of Long Beach from this draft Permit, even though that city’s MS4 is as much a part of the “system” (and its area as much a part of the watersheds) as any of the Permittees included in the draft Permit. The draft Permit is not a system-wide permit.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
4 (cont.)	LACFCD Permit		<p><u>Recommendation</u> Delete the LACFCD from the draft Permit and issue the LACFCD a separate permit, or include a separate chapter that clearly describes the requirements applicable to the LACFCD as set forth in Exhibit V - Proposed LACFCD Findings for 2012 MS4 permit (clean) and Exhibit W - FCD Chapter (Proposed MCM) 5-1-12 (rev2).docx.</p>
5	Title of the Permit	Title [Page 1]	<p>The draft Permit is currently titled "Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Los Angeles County Flood Control District, including the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach." This title is not accurate. The Permit covers several MS4 systems and there are discharges within the LACFCD's jurisdiction that are not covered by this Permit.</p> <p><u>Recommendation</u> To be accurate, the title should be "Waste Discharge Requirements for 84 Incorporated Cities Within the County of Los Angeles, the County of Los Angeles, and the Los Angeles County Flood Control District."</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part I. Facility Information			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
6	Use of LACFCD area as jurisdictional boundary	Part I, Table 1 & Table 3 [Pages 1 & 9]	<p>The current language, "...84 incorporated cities within the Los Angeles County Flood Control District..." appears to imply the LACFCD has jurisdiction or oversight over the municipalities. The LACFCD boundary is merely a service area boundary.</p> <p><u>Recommendation</u> Revise to read:</p> <p>"...84 incorporated cities within the Los Angeles County Flood Control District"</p>
7	Contact Information for LACFCD	Part I, Table 2 [Page 8]	<p>The contact person for the Los Angeles County Flood Control District is incorrect.</p> <p><u>Recommendation</u> Revise to: Gary Hildebrand, Assistant Deputy Director 626-458-4300 ghildeb@dpw.lacounty.gov</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
8	Primary Pollutants of Concern	II.A. [Page 13]	<p>The Findings list the primary pollutants of concern as identified in by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report from 1994-2000 as indicator bacteria, nutrients, total dissolved solids, turbidity, total suspended solids, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, cyanide, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chloropyrifos. A more recent report from 1994-2005 determined constituents of concern based on the more recent mass emission monitoring data and should be referenced in the findings.</p> <p><u>Recommendation</u> Reference the more recent 1994-2005 report that indicates the constituents of concern are: indicator bacteria, total aluminum, copper, lead, zinc, diazinon, and cyanide.</p>
9	Debris and Trash	II.A. [Page 13]	<p>The finding states that stormwater and non-stormwater discharges of debris and trash are also a pervasive water quality problem in the Los Angeles Region. This finding apparently ignores the tremendous efforts made on the various Trash TMDLs.</p> <p><u>Recommendation</u> Include a statement that the trash TMDLs and the significant efforts on the part of the Permittees have reduced trash generation in the various watersheds.</p>
10	Use of LACFCD area as jurisdictional boundary	II.B, D, Table 6, Table 7 [Pages 13, 15, 20, 23]	<p>The current language, "...84 Cities within the Los Angeles County Flood Control District..." appears to imply the LACFCD has jurisdiction or oversight over the municipalities. The LACFCD boundary is merely a service area boundary. See Comment No. 6.</p> <p><u>Recommendation</u> Revise to read:</p> <p>"...84 Cities within the Los Angeles County Flood Control District..."</p>

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
11	Permit Application	II.C [Pages 14-15]	<p>This Finding asserts that the Regional Water Board considered the “appropriateness of permitting discharges from MS4s on a system-wide or jurisdiction-wide basis or a combination of both” but concluded that “one system-wide permit is appropriate.” The draft Permit proposes to combine the LACFCD, the County and 84 cities (but not the City of Long Beach) in a single combined permit.</p> <p>The Finding also asserts that “as the primary owner and operator of the Los Angeles County MS4, the LACFCD should remain a Permittee in the single system-wide permit.”</p> <p>As discussed in greater detail in the General Comments section of these comments, the LACFCD has submitted a report of waste discharge requesting an individual MS4 permit. Placing the LACFCD in a combined permit without its consent is unlawful. The Regional Board has no discretion to issue a combined permit over an applicant’s objection.</p> <p>The Clean Water Act provides that permits for discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. 33 U.S.C. § 1342(p)(3)(B)(i). The federal regulations implementing the Act similarly provide that permits for stormwater discharges can be issued either through “one system-wide permit” or through “distinct permits,” including for “individual discharges from municipal separate storm sewers within the system.” 40 C.F.R. § 122.26(a)(3)(ii).</p>

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
11 (cont.)	Permit Application	II.C [Pages 14-15]	<p>The draft Permit states that the Regional Water Board has “discretion as the permitting authority” to determine whether to issue a system-wide permit or individual permit. This position is legally erroneous. The Regional Board cannot require a permittee to participate in a system-wide permit over the Permittee’s objection. Pursuant to 40 C.F.R. § 122.26(a)(3)(iii), the operator of a municipal separate storm sewer may either participate in a joint application with other operators or “[s]ubmit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.” 40 C.F.R. § 122.26(a)(3)(iii)(B). Thus, the federal MS4 regulations give an individual municipality or public entity operating a municipal separate storm sewer the right to obtain an individual stormwater permit. The regulations do not authorize the Regional Water Board to issue a permit for which a municipality or entity has not applied and over their objection.</p> <p>Additionally, the draft Permit states that the Regional Water Board is issuing a system-wide permit and justifies its actions on that finding. The finding, however, is factually erroneous. The Board is not issuing a system-wide permit. The Regional Water Board has specifically excluded the City of Long Beach from this draft Permit, even though that city’s MS4 is as much a part of the regional storm sewer “system” (and its area as much a part of the watersheds) as those MS4s and cities included under the Permit. The Regional Water Board has provided no justification for excluding Long Beach.</p> <p>Finally, the LACFCD, while a significant MS4 operator in the County, is not the “primary owner and operator of the Los Angeles County MS4.” First, the LACFCD owns and operates <i>only</i> its own MS4. The County and the 84 cities named in the Permit each own and operate their own MS4s. The LACFCD further objects to the term “Los Angeles County MS4,” since it assumes the existence of a single MS4 instead of a collection of separate MS4s system which, or which may not, be interconnected. Second, even were the county-wide MS4 to be considered a single system (which it is not), since city streets form the single most significant part of the count MS4, and the LACFCD owns or operates no streets, there would be no support for such a finding. Other municipalities, including the City of Los Angeles, own or operate a significant portion of the MS4 in the urbanized areas of the County.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
12	Permit Application	II.C [Pages 14-15]	<p><u>Recommendation</u> Delete language referring to the “combined” Permit and regarding the LACFCD as the “primary owner and operator of the Los Angeles County MS4”; issue the LACFCD its requested individual permit. Also, wherever in the draft Permit the term “Los Angeles County MS4” appears, delete and replace with “MS4s subject to this Order.”</p>
13	Primary owner and operator of MS4	II.C. [Page 15]	<p>The finding states that the LACFCD should remain a Permittee in a single system-wide permit because it is the primary owner and operator of the Los Angeles County MS4. This statement is misleading since it does not acknowledge that MS4 also includes streets and roads, and as such, other Permittees also own and operate a significant portion of the Los Angeles County MS4.</p> <p><u>Recommendation</u> Revise to read:</p> <p>“The Regional Water Board also determined that as the primary owner and operator of the Los Angeles County MS4, <u>because it operates MS4 infrastructure in each watershed management area</u>, the LACFCD should remain a Permittee in the single system-wide permit;...”</p>
14	Permit Coverage and Facility Description	II.D. [Page 15-16]	<p>This section inappropriately singles out the LACFCD when it should address the area being covered by this draft Order. There are areas within the service area of the LACFCD that are not covered under this Order.</p> <p>This paragraph should also state that the MS4 also includes the street networks from all Permittees.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
14 (cont.)	Permit Coverage and Facility Description	II.D. [Page 15-16]	<p><u>Recommendation</u> Revise the last paragraph of Part II.D as follows:</p> <p>The Los Angeles County Flood Control District <u>area covered under this Order</u> encompasses more than 3000 square miles. The LACFCD <u>This area</u> contains a vast drainage network...Maps depicting the major drainage infrastructure of the LA County MS4 <u>area covered under this Order</u> are included in Attachment C of this Order.</p>
15	Total Maximum Daily Loads	Part II.J.1 [Pages 20-23]	<p>The County and the LACFCD are concerned that final WLAs for State-adopted TMDLs have been incorporated as numeric effluent limitations that apply at the point of discharge from the MS4 and, where applicable, as receiving water limitations. The more appropriate approach is to incorporate interim and final WLAs as BMP-based effluent limitations defined as TMDL Control Measures required in the Watershed Management Program.</p> <p><u>Recommendation</u> Refer to the attached file titled "Exhibit F - LACMS4 Redlined TMDL Excerpts 20Jul2012Rev" for language in the Findings section that addresses this concern.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
16	Prohibitions of Non-Storm Water Discharges – Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Discharges	III.A.1.b & Attachment F – IV.A.5 [Page 26 & Pages F-25 – F-26]	<p>As proposed, all discharges authorized by the USEPA under CERCLA, including well development and redevelopment of extraction wells, which normally require coverage under General NPDES Permit No. CAG994004 – Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties would be exempt. CERCLA discharges may fall under CAG914004 – Discharges of Treated Groundwater from Investigation and/or Cleanup of Volatile Organic Compounds Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties, or CA834001 – Waste Discharge Requirements for Treated Groundwater and Other Wastewaters from Investigation and/or Cleanup of Petroleum Fuel-Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties. There should be no exception for CERCLA discharges to comply with permit requirements that other dischargers must follow. MS4 Permittees do not have such waivers when compliance is not practicable; other dischargers should be held to the same standards.</p> <p>In addition, although discharges are required to comply with applicable water quality standards, the requirement can be waived if compliance is not practicable. The Permit also waives prior notification for unplanned discharges, and only requires notification within 24 hours after the unplanned discharge has occurred. Such waivers can have significant impacts to MS4 Permittees as they are held liable for discharges to their MS4. Lack of notification prior to an unplanned discharge can also impact LACFCD operations and system capacity, as well as endanger field staff and contractors working in its storm drains and channels.</p> <p><u>Recommendation</u> Require CERCLA dischargers to seek coverage under the appropriate NPDES Permit and comply with all requirements. In addition, dischargers must notify MS4 Permittees prior to unplanned discharges, and comply with any requirements issued by the MS4 Permittee.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
17	All Discharge Categories – Segregation of Flows, Notification	Table 8, Attachment F – IV.A.5 [Page 33, Page F-26]	<p>As written, the Permit would require segregation of conditionally exempted discharges from potential sources of pollutants. Since the MS4 can receive flows from multiple discharges and sources, segregating the conditionally exempt flows may not be feasible.</p> <p>The Permit also would require that the Los Angeles County Flood Control District require dischargers of one acre-foot (325,581 gallons) or more to provide advance notification to potentially affected MS4s, including, at minimum, the District and the Permittee with land use jurisdiction of the originating discharge.</p> <p>It is not the sole responsibility of the LACFCD to require advanced notification. The LACFCD is not necessarily in a position to know when one acre-foot or more of discharge will be entering its MS4. The point of initial contact with the “MS4” will in many cases be the street or gutter, which are owned by the municipality, not the LACFCD. Also, a number of entities operate significant MS4 systems, so there is no reason for the requirement to single out the LACFCD. This should be the responsibility of all the MS4 Permittees.</p> <p>Also, most residential swimming pools hold from 20,000 to 22,000 gallons of water, and decorative fountains even less. Is the one-acre foot threshold intended to exempt residential swimming pools and most decorative fountains from advanced notification? This notification would only apply to lakes dewatering and municipal/county/commercial swimming pools that are approximately half the size of an Olympic-sized swimming pool (approximately 660,000 gallons). Notification should be set at 30,000 gallons.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
17 (cont.)	All Discharge Categories – Segregation of Flows, Notification	Table 8, Attachment F – IV.A.5 [Page 33, Page F-26]	<p><u>Recommendation</u> Revise as follows:</p> <p><u>When logistically and economically feasible, S</u>segregate conditionally exempt non-storm water discharges from potential sources of pollutants to prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Whenever there is a discharge of one-acre-foot <u>30,000 gallons</u> or more into the MS4, the <u>MS4 Permittee</u> Los Angeles County Flood Control District shall require advance notification by the discharger to the <u>all</u> potentially affected MS4 Permittees, including at a minimum the District and the Permittee with jurisdiction over the land area from which the discharge originates. <u>The threshold may be decreased accordingly based on any low flow diversion structures downstream of the point of discharge.</u></p>

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
18	Table 8 – Conditions and BMPs – Prescriptive and Resource Intensive	Table 8, Attachment F – IV.A.5 [Pages 33-36, Page F-27 – F-28]	<p>First, the use of the word “ensure” in the conditions/BMPs should be deleted, since the requirement is being asked of a third-party discharger, not the Permittee. A Permittee cannot “ensure” the conduct of a third-party discharger. The provision should use the term “require” instead.</p> <p>Second, the Permit would add tremendous burden on MS4 Permittees to address exempt non-storm water discharges which are generally perceived to be low risk. Specifically, Section III.A.2.b combined with Table 8 would require Permittees to develop and implement procedures to ensure discharges meet very prescriptive and often highly resource intensive BMPs. For the dewatering of lakes, swimming pools/spas, and decorative fountains, the requirement to inspect and clean the MS4 inlet and MS4 outlet to the receiving water immediately prior to discharge raises significant practical problems. The owner/operator of the outlet often is different from the owner/operator of the inlet or the initial MS4 (such as the street), and thus not aware of the discharge. The MS4 outlet may also not be easily identifiable by the discharger or the initial MS4 owner/operator. This requirement is logistically infeasible, impractical, highly resource-intensive, and expensive. Moreover, since the outlet (which is discharging water from numerous sources) is constantly discharging, there should not be a need to clean it out.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
18 (cont.)	Table 8 – Conditions and BMPs – Prescriptive and Resource Intensive	Table 8, Attachment F – IV.A.5 [Pages 33-36, Page F-27 – F-28]	<p><u>Recommendation</u> Revise as follows:</p> <p><u>Require</u> Ensure procedures for advanced notification by the lake owner/operator to the Permittee(s) no less than 72 hours prior to the planned discharge.</p> <p>Immediately prior to discharge, visible trash on the shoreline or on the surface of the lake shall be removed and disposed of in a legal manner.</p> <p>Immediately prior to discharge, the discharge pathway, <u>leading to the MS4</u> the MS4 inlet to which the discharge is directed, and the MS4 outlet from which the water will be discharged to the receiving water, shall be inspected and cleaned out <u>by the discharger</u>.</p> <p>Discharges shall be volumetrically and velocity controlled by the discharger to minimize resuspension of sediments.</p> <p>The discharger shall take measures to stabilize lake bottom sediments.</p> <p><u>Require</u> Ensure procedures for water quality monitoring for pollutants of concern in the lake.</p> <p><u>Require</u> Ensure record-keeping of lake dewatering by the lake owner/operator.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19	The Receiving Water Limitations Section Must be Revised	V.A. [Pages 37-38]	<p>The Receiving Water Limitation section of the draft Permit is both unlawful and unwise. The draft:</p> <ul style="list-style-type: none"> • turns upside down prioritization of efforts to reduce stormwater pollution under the Permit by emphasizing those pollutants of less significance over those of greater significance; • fails to include provisions that would incentivize Permittees to coordinate their efforts under this section with the TMDLs as well as other goals of the Permit; • is an abuse of discretion because it is impossible to comply with; and • creates inordinate liability for Permittees due to third party lawsuits. <p>All of these deficiencies can be remedied, and this section of the Permit improved, by making this section consistent with the approach to TMDLs set forth in Part VI.E.</p> <p>According to the draft Fact Sheet issued in support of the draft Permit, a Permittee can be found in violation of Parts 1 and 2 of the receiving water limitations, even though the Permittees are complying in good faith with the iterative process set forth in Part 3. In contrast, where there are exceedances of pollutants addressed by TMDLs, a Permittee is not considered to be in violation of the Permit if it is in compliance with an approved watershed management program. The combination of these two parts of the Permit results in the Permit turning upside down the prioritization of efforts to address pollutants in stormwater.</p> <p>As a result of the draft Permit’s approach to receiving water limitations, a Permittee must give priority to those pollutants whose exceedances cause a violation of the receiving water limitation section. Otherwise the Permittee would be in violation of the Permit. Those exceedances, however, are exceedances which the Regional Board has considered to be of lesser priority as not warranting the preparation of a TMDL as of this time.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>On the other hand, it is the pollutants which are the subject of the TMDL that have been found to be of greater significance. Accordingly, it is to those pollutants to which the parties' efforts should be most directed. The approach set forth in the receiving water limitation section, however, turns this prioritization upside down.</p> <p>To remedy this circumstance, the draft Permit should provide that pollutants not covered by TMDLs but whose presence violates receiving water limitations should be addressed by the Permittees in conjunction with their watershed management program when one is being developed or exists, and compliance with that watershed management program is compliance with receiving water limitations. By doing so, Permittees can incorporate and prioritize their efforts to address exceedances of non TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p> <p>Second, the receiving water limitation section fails to provide any incentive for innovative programs that might address exceedances of receiving water limitations. The LACFCD recommends that an incentive be included to develop new, innovative approaches, particularly those that will result in greater infiltration of stormwater before it reaches the MS4. Accordingly, we propose that a paragraph be added to the receiving water limitation section that would provide that a Permittee can be deemed in compliance if it is developing projects that will result in greater infiltration of stormwater in the watersheds where the water limitations are being exceeded.</p> <p>Third, the receiving water limitations section, as drafted, is unlawful and an abuse of discretion. The section, as written, is impossible to comply with.</p>

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>It is well recognized that stormwater is variable and that municipal stormwater Permittees do not have control over stormwater flows. As a result, it is difficult, and at times impossible, to engineer solutions or adopt programs to fully address the pollutants in stormwater. The State Water Board’s Blue Ribbon Panel found in 2006, “it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges.” (see Exhibit G - State Water Board Blue Ribbon Panel Final Report) In response to public comment dated April 27, 2012, regarding the draft tentative order for the renewal of the MS4 Permit for the California Department of Transportation, State Water Board staff cited this finding of the Blue Ribbon Panel and endorsed it.</p> <p>The current draft of the receiving water limitations, however, does not recognize the finding by the State Water Board’s Blue Ribbon Panel and there is no evidence in the fact sheet that supports a finding that the Permittees can comply with this section. On the contrary, our analysis of available outfall monitoring data supports the Blue Ribbon Panel’s conclusion. Because storm drain outfall monitoring has not been conducted in Los Angeles County in the past, we conducted an analysis of available outfall monitoring data from urbanized areas similar to Los Angeles County. The purpose of the analysis was to compare real outfall monitoring results from urban areas with applicable Water Quality Standards. The results, summarized in Exhibit H - Outfall Data Summary, show that storm drain discharges can and do exceed Water Quality Standards. For example, discharges exceeded the e. Coli and other bacterial Water Quality Objectives 50 to 100 percent of the time. Unless a water body has an established bacterial TMDL – and there are currently no bacterial TMDLs for Dominguez Channel and San Gabriel River – it is not possible for Permittees to comply with the receiving water limitations.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>Finally, the receiving water limitations language, as drafted, creates inordinate legal liability for Permittees due to third-party law suits. In the past, Regional Board staff has said that they would exercise prosecutorial discretion with respect to enforcement, but those statements provide no comfort to Permittees. Exhibit I - Stockton Summary 2012-07-20 is a technical memorandum that discusses how a Permittee subject to similar language, the City of Stockton, was subject to a lawsuit even though it was in full compliance with the iterative process.</p> <p>As discussed above, the Permit recognizes this issue with respect to those pollutants addressed by TMDLs. There is no reason why a different standard should apply to the pollutants not addressed by TMDLs.</p> <p><u>Recommendation</u> Part V should include the following paragraph:</p> <p style="padding-left: 40px;">In lieu of preparing an integrated monitoring compliance report set forth in Part V.A.3.a. a Permittee may address discharges from the MS4 that cause or contribute to a violation of receiving water limitations in their watershed management program applicable to the receiving water. The Permittee shall not be considered to be in violation of Part V.A. of this Order if it is in compliance with that watershed management program.</p> <p>Part V should also add the following:</p> <p style="padding-left: 40px;">If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts 1 and 2 above, unless it fails to implement the requirements provided in Parts 3 and 4 as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	Alternatively, the LACFCD is supportive of the proposed CASQA Receiving Water Limitation language in Exhibit J - CASQA proposal - Receiving Water Limitation Provision to Stormwater NPDES Permits.
20	Definition of Receiving Water Limitations	V.A. & Attachment A - Definitions [Pages 37-38 and A-8]	<p>The definition of receiving water limitation includes any applicable numeric or narrative water quality objective or <i>criterion</i> contained in the “water quality control plan for the Los Angeles Region (Basin Plan), water quality control plans <i>or policies</i> adopted by the State Water Board, or federal regulations, including but not limited to 40 C.F.R. § 131.38.” Draft Permit, p. A-8 (emphasis added).</p> <p>The reference to “policies” adopted by the State Water Resources Control Board is ambiguous. The State Board adopts water quality objectives and water quality control plans, not policy resolutions. See Water Code § 13170. It is not clear what is meant by policies.</p> <p>Additionally, the definition should not reference “criterion” under federal regulations. Permittees are not required to comply with federal water criteria. A Permittee is only required to comply with water quality standards adopted by the state or federal government that are applicable to the particular waterbody. In referring to “criterion” that might be under federal regulations, the definition could be construed as referring to criteria with which Permittees are not required to comply. It creates ambiguity in the definition.</p> <p><u>Recommendation</u> The reference to “policies” adopted by the State Board and “criterion” should be deleted from the definition of receiving water limitation.</p>
21	Notification for Exceedances	V.A.3.a. Footnote 23 [Page 37]	<p>30 days does not provide sufficient time to do the data analysis and determination.</p> <p><u>Recommendation</u> For footnote 23, revise to read: “Within 30<u>90</u> days of receipt of analytical results from the sampling date.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
22	General	VI.C.1 [Page 45]	<p>While the Fact Sheet indicates the Watershed Management Program can be performed individually or collectively (Page F-39), the language in the Watershed Management Program Provisions (Part VI.C.) should clearly affirm that Watershed Management Programs can be done by one single Agency and/or a Watershed Group.</p> <p><u>Recommendation</u> In VI.C.1., add language that states “Permittees may participate in the Watershed Management Program individually or collectively” so that the Fact Sheet and Provision language are consistent.</p>
23	Adaptive Management Process for Watershed Management	VI.C. [Pages 45-56]	<p>Related to our Comment No. 19 for Part V Receiving Water Limitations, the draft Permit needs to be revised to address pollutants not covered by TMDLs but whose presence violates receiving water limitations. Such exceedances should be addressed by Permittees in conjunction with their watershed management program or jurisdictional storm water management program, and compliance with that program should equate compliance with receiving water limitations. This allows Permittees to incorporate and prioritize their efforts to address exceedances of non-TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p> <p><u>Recommendation</u> Add the following to the end of Part VI.C.1.b.:</p> <p>“and to address discharges that cause or contribute to receiving water limitations exceedances not covered under a TMDL.</p>
24	Sizing of Structural Controls	VI.C.3.b.iv.(4).(c) of working proposal [Page 52 of tentative order]	<p>The staff working proposal required that structural controls be sized <i>at a minimum</i> to treat the volume of stormwater runoff from the 85th percentile, 24-hour storm. However, the tentative order removed this item. To be consistent with the TMDL requirement (E.2.d.4, page 113), re-insert this item and remove the “at minimum” language.</p> <p><u>Recommendation</u> Re-insert item c from the working proposal and delete the "at minimum" language.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.1. Storm Water Management Program Minimum Control Measures			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
25	Receiving Water Limitations Exceedances Addressed by the Adaptive Management Process	VI.C.6.a.ii.(1) & 6.b.ii.(1) [Pages 55 & 56]	<p>Related to our Comment No. 19, we recommend the following as a remedy to address pollutants not covered by TMDLs but whose presence violates receiving water limitations. Such exceedances should be addressed by Permittees in conjunction with their watershed management program or jurisdictional storm water management program, and compliance with that program should equate compliance with receiving water limitations. This allows Permittees to incorporate and prioritize their efforts to address exceedances of non-TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p> <p><u>Recommendation</u> Add "The Permittee shall not be considered in violation of a Receiving Water Limitation (Part V.A.) or a Water Quality Based Effluent Limitation if it is implementing the adaptive management process."</p>
26	General Requirements	VI.D.1.a. [Page 56]	<p>This section states that each Permittee may implement customized actions within each general category of control measures as set forth in an approved Watershed Management Program. The deadline to submit a draft Watershed Management Program Plan is one year after the effective date of the Permit and the final Plan is due 3 months after receipt of the Regional Board's comments. That means that it could easily take 1½ years or more for Permittees to have an approved Watershed Management Program. It is not clear if the Permittees are expected to implement all of the minimum control measures in the draft tentative order until their customized actions are approved.</p> <p><u>Recommendation</u> For those Permittees that have indicated their intent to customize their minimum control measures through a Watershed Management Program, allow them to continue implementing the Stormwater Quality Management Program requirements per the current (2001) Permit.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.1. Storm Water Management Program Minimum Control Measures			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27	Timelines for Implementation	VI.D.1.b.i [Page 56]	<p>This section states that unless otherwise noted, each Permittee shall ensure implementation of requirements contained in Part VI.D within 30 days after the effective date of the Order. Most of the requirements in the section do not have a separate time schedule noted and would need to be implemented within 30 days of the effective date. While immediate implementation is feasible for such requirements that exist in the current (2001) Permit, it is not feasible to implement most new requirements, such as the Integrated Pest Management Program. Such new requirements should be allotted more time to develop and ultimately implement.</p> <p><u>Recommendation</u> Clarify the language such that the 30 day timeline only applies to carryover requirements from the current (2001) Permit and development of new requirements are to begin within 30 days of the effective date.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.4. Public Information and Participation Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
28	General	VI.D.4.a.i [Page 58]	<p>This section requires that a PIPP must be implemented “that includes, but is not limited to, the requirements listed in this part.” (emphasis supplied.) This is problematic language, because it purports to state that a PIPP must include unspecified additional requirements that could be found wanting by the RWQCB or a court.</p> <p><u>Recommendation</u> Modify to read “Each Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to <u>at a minimum</u>, the requirements listed in this Part VI.D.4.”</p>
29	Residential Outreach	VI.D.4.d.i.(3) [Page 60]	<p>Same as Comment No. 28.</p> <p><u>Recommendation</u> Modify to read "Distribute activity specific stormwater pollution prevention public education materials to, but is not limited to <u>at a minimum</u>, the following points of purchase:"</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
30	Public Facility Inventory	VI.D.8.c.i. [Page 94]	<p>This requirement states that each Permittee shall maintain an updated inventory of all Permittee- owned or operated facilities within its jurisdiction that are potential sources of storm water pollution, including storm water management facilities (e.g., detention basins). We do not agree that our stormwater management facilities themselves are potential sources of stormwater pollution. In addition, there are requirements under the Monitoring and Reporting Program to map open channels and underground pipes.</p> <p><u>Recommendation</u> Delete the requirement to inventory storm water management facilities.</p>
31	Flood Management Projects	VI.D.8.e.ii. [Page 96]	<p>This requirement states that each Permittee shall implement the following measures for Permittee-owned and operated flood management projects: (1) Develop procedures to assess the impacts of flood management projects on the water quality of receiving water bodies. (2). Evaluate existing structural flood control facilities to determine if retrofitting the facility to provide additional pollutant removal from storm water is feasible. It is our understanding that these requirements apply only to flood management <i>projects</i> and do not require a comprehensive evaluation of all existing stormwater facilities.</p> <p><u>Recommendation</u> For clarity, revise as follows:</p> <p>(1) Develop procedures to assess the impacts of <u>future</u> flood management projects on the water quality of receiving water bodies.</p> <p>(2) Evaluate existing–structural flood control facilities <u>during the planning phases of major maintenance or rehabilitation projects</u> to determine if retrofitting to provide additional pollutant removal from stormwater is feasible.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
32	Storm Drain Maintenance	VI.D.8.h.viii [page 102]	<p>The title of this section is misleading as the requirements pertain to open channels and not underground storm drains.</p> <p><u>Recommendation</u> Rename the section to “Open Channel Maintenance”</p>
33	Storm Drain Maintenance	VI.D.8.h.viii (1) & (2) [page 102]	<p>These requirements state that visual monitoring of Permittee-owned open channels and other drainage structures, including debris basins, for debris needs are to be done at least annually and trash and debris are to be removed at minimum once per year. Maintenance of debris basins is already regulated under separate permits including the California Regional Water Quality Control Board’s Water Quality Certification for Proposed County Debris Basin Maintenance Project (159 Basins) (Corps’ File No. 94-01558-CSC), Los Angeles County (File No. 02-144-2008 Renewal), State Water Resources Control Board Order No. 2003-0017-DWQ General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification, US Army Corps of Engineers, Los Angeles District Regional General Permit SPL-2003-00411-KW, and the Department of Fish and Game Final Lake or Streambed Alteration Agreement Notification No. 1600-2008-0290-R5. The Water Quality Certification specifically authorizes sediment removal only under three conditions, based on the condition of the watershed or other special circumstances.</p> <p><u>Recommendation</u> Revise to read:</p> <p>(1) Visual monitoring of Permittee-owned open channels and other drainage structures including debris basins, for debris at least annually.</p> <p>(2) Removal of trash and debris from open channels and debris basins a minimum of once per year before the wet season.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.9. Illicit Connections and Illicit Discharges Elimination Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
34	Illicit Discharge Source Investigation and Elimination – Diversion or Treatment	VI.D.9.iv.(3), VI.D.9.b.v. & Attachment F – VI.C.9.b. [Page 108, Page F-78]	<p>Requires the Permittee to initiate a permanent solution if the source of the illicit discharge cannot be traced, including diversion of the entire flow to the sanitary sewer or treatment.</p> <p>There may be situations where the illicit discharge is extremely difficult to trace, the responsible party/parties is/are not clear, diversion to the sanitary sewer is not feasible (due to the size or location of the discharge), or treatment is too cost prohibitive. For example, the oil discharge discovered in January 2011 in the Dominguez Channel near 223rd Street in the City of Carson involved months of investigation involving multiple agencies and possible responsible parties. The discharger(s) must be held responsible and be part of the solution.</p> <p><u>Recommendation</u> Revise as follows:</p> <p>iv.(3) If the source of the illicit discharge cannot be traced to a suspected responsible party, affected Permittees shall implement its spill response plan and then initiate a permanent solution as described in section 9.b.v below.</p> <p>v. In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, including the inability to find the responsible party/parties, the Permittee shall provide for diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee(s) shall notify the Regional Water Board within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion <u>available information for the Regional Board to further and appropriate actions against the suspected discharger(s).</u></p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
35	The Final WQBEL Effluent Limitations and WLAs Should be Reflected as BMPs, Not Numeric Effluent Limits	VI.E.2.e. [Page 114]	If WQBELs or TMDL WLAs are included in the Permit they are not required to be reflected in the form of numeric effluent limits. With respect to this Permit, it is an abuse of discretion to do so. If WQBELs or TMDL WLAs are included in the Permit, they should be reflected in the form of BMPs.

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
36	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The LACFCD is very concerned with staff's proposal to express final TMDL WLAs as strict numeric WQBELs and/or Receiving Water Limitations in the Permit. The State Water Board's Blue Ribbon Panel (see Exhibit G - State Water Board Blue Ribbon Panel Final Report) found in 2006 that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." As mentioned in our Comment No. 19 regarding the proposed RWL language, in its response to public comments dated April 27, 2012, regarding the Draft Tentative Order for the renewal of the Caltrans MS4 Permit, State Water Board staff cited the Blue Ribbon Panel's findings in defending its decision to not incorporate NELs in that Permit (see Exhibit G - State Water Board Blue Ribbon Panel Final Report). State Water Board staff stated, "Consistent with the findings of the Blue Ribbon Panel and precedential State Water Board orders (State Water Board Orders Nos. WQ 91-03 and WQ 91-04), this Order allows the Department [Caltrans] to implement BMPs to comply with the requirements of this Order." (SWRCB Comment Response Report, for Caltrans MS4 Permit, April 27, 2012, Page 2 of 110).</p> <p>State Water Board staff further noted that "in November 12, 2010, USEPA issued a revision to a November 22, 2002 memorandum in which the USEPA had 'affirm[ed] the appropriateness of an iterative, adaptive management best management practice (BMP) approach' for improving stormwater management over time. In the revisions, USEPA recommended that, in the case the permitting authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality excursion, the permitting authority, where feasible (<i>emphasis added</i>), include numeric effluent limitations as necessary to meet water quality standards. However, the revisions recognized that the permitting authority's decision as to how to express water quality based effluent limitations (WQBELs), i.e. as numeric effluent limitations or BMPs, would be based on an analysis of the specific facts and circumstances surrounding the Permit. Moreover, USEPA has since invited comment on the revisions to the memorandum and will be making a determination as to whether to 'either retain the memorandum without change, to reissue it with revisions, or to withdraw it.'" (<i>ibid</i>).</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
36 (cont.)	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The Regional Board is not required to reflect the final WQBELs as numeric effluent limits. 40CFR 122.44(k)(2) and (3) specifically authorizes the use of BMPs. The State Water Board, in its response to comments on the proposed Caltrans Permit, specifically said that it may “impose BMPs for control of storm water discharges in lieu of numeric effluent limitations,” citing section 122.44(k)(2) and (3). It has not been demonstrated that it is feasible to reflect the final WQBELs as numeric effluent limits. In addition, it has not been proven that these final WQBELs can currently be met.</p> <p>In this regard, although Regional Board staff stated during the May 3 workshop that it is feasible to incorporate NELs at this time, staff did not provide evidence to substantiate the feasibility of NELs. In assessing the feasibility of NELs in stormwater permits, the Blue Ribbon Panel based its evaluation on four criteria: (1) The ability of the State Water Board to establish appropriate objective limitations or criteria; (2) how compliance determinations would be made; (3) the ability of dischargers and inspectors to monitor for compliance; and (4) the technical and financial ability of dischargers to comply with the limitations or criteria (<i>emphasis added</i>). In response to a Regional Board member question regarding the cost to comply with TMDLs, staff responded that cost analyses were completed as part of TMDL development (see Exhibit G - State Water Board Blue Ribbon Panel Final Report). Significantly, the analysis of costs in the TMDLs did not address the question of the financial ability of dischargers to comply with the limitations or criteria. Nor did the analysis include a cost-benefit analysis or address whether the means to comply with the TMDL was cost effective. The analyses in the TMDLs specifically did not include a cost benefit analysis or a determination of whether it was cost effective. It is also important to note that staff’s cost analyses were not held to the “reasonable assurance” standard, and no quantitative analyses were done to demonstrate that the BMPs assumptions used by staff would have a reasonable assurance of meeting TMDL standards. In fact, during TMDL development, many Permittees made comments to this end regarding staff’s cost analyses for TMDLs. The LACFCD agrees with State Water Board staff that NELs, numeric WQBELs and/or Receiving Water Limitations currently are not feasible in stormwater permits. Los Angeles Region MS4 dischargers should not be held to enforceable NELs when discharges into the MS4, such as from Caltrans and construction sites, are not being held to the same standard.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
36 (cont.)	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The Regional Board staff has submitted no evidence that demonstrates that compliance with numeric WQBELs or WLAs is feasible. The fact sheet contains no evidence. Instead the fact sheet solely cites unidentified work allegedly performed in adopting the TMDLs. That work is not set forth in the fact sheet, and no such work demonstrating feasibility has been performed. Indeed, when preparing the TMDLs, no analysis was performed as to whether TMDLs could be achieved under the MEP standard, or any other standard, and no analysis was performed of whether the implementation was feasible.</p> <p>To further evaluate the feasibility of the numeric approach and explore possible alternatives, the LACFCD conducted an extensive review and analysis of other Phase I permits, EPA guidance documents and policies, and other pertinent information. The results of these analyses and additional related comments are contained in Exhibit K - TMDLs into SW Permits Review 20Jul12, Exhibit Q – Comments TM LACMS4 TMDLs 21Jul2012, and Exhibit R – TMDL Compliance Assessment 21Jul2012, and hereby incorporated as part of this comment.</p> <p><u>Recommendation</u></p> <p>Revise the draft Permit to implement final TMDL WLAs using BMPs. See Exhibit F – LACMS4 Redlined TMDL Excerpts 20Jul2012Rev for suggested language.</p> <p>Alternatively, insert new section E.2.e.ii:</p> <p>“Two years before the compliance deadline for an applicable final water quality-based effluent limitation and/or final receiving water limitation, Regional Board shall evaluate progress made by Permittees toward compliance with the standard, including review of the results from Permittees’ adaptive management process (VI.C.6.), to determine whether the compliance timeline should remain unchanged, or if the Order should be revised to incorporate a new compliance timeline.”</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
37	The Permit Should not Contain Final WQBELs Based on TMDLs Where Compliance with the TMDL Will Occur After the Expiration Date of This Permit		<p>The Permit is a five year permit. Many of the TMDLs incorporated into the draft Permit contain compliance dates more than five years from the hearing on this Permit. The Regional Board is not required to include WQBELs and WLAs that are applicable only after the expiration of the Permit. The fact sheet and draft Permit contain no reason for doing so.</p> <p>It is an abuse of discretion for the Permit to contain WQBELs and WLAs that are applicable after the termination of the Permit. It is also not good policy, as it could restrict the flexibility of the Regional Board and the Permittees to address these matters in subsequent permits.</p> <p><u>Recommendation</u> Delete all references to final WQBELs or final WLAs that are not applicable until after the five year termination date of this Permit.</p>
38	The Permit Should Require Compliance with State Adopted TMDLs Where Final Compliance Dates Have Passed Through Implementation of BMPs Not Numeric Effluent Limits	VI.E.4. [Page 116]	<p>For the reasons set forth above, the Permit is not required to reflect interim or final TMDL WLAs as numeric effluent limits. The State Water Board’s Blue Ribbon Panel has found that it is not feasible to set numeric effluent limits at this time, and there is no evidence that the Permittees can comply with final wasteload allocations set forth in those TMDLs whose final compliance dates have passed. There is no evidence and the fact sheet contains no reference to any such evidence.</p> <p>At the time the TMDLs were adopted, there was no evidence submitted that the TMDLs wasteload allocations could be reached on the adopted, final compliance dates. No analysis was made as to whether they could be accomplished through implementation of programs that met the MEP or any other standard.</p> <p>It is an abuse of discretion for this Regional Board to adopt a permit with which the Permittees cannot comply. If this Regional Board is going to require compliance with state adopted TMDLs where the adopted final compliance deadline has passed, then the Regional Board should require compliance through implementation of BMPs whether than numeric effluent limits.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
38 (cont.)	The Permit Should Require Compliance with State Adopted TMDLs Where Final Compliance Dates Have Passed Through Implementation of BMPs Not Numeric Effluent Limits	VI.E.4. [Page 116]	<p><u>Recommendation</u> Part VI.E.4.a. should read as follows:</p> <p>“Permittees shall address water quality-based effluent limitations and/or receiving water limitations in state-adopted TMDLs for which final compliance deadlines have passed either through a watershed management program or through implementation of BMPs that address those pollutants. Exceedances of the WLAs should be addressed in the watershed management program or, if the Permittee is not participating in a watershed management program, in the Permittee’s integrated monitoring compliance report where required.”</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment A. Definitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
39	Definition of Receiving Water Limitations	V.A. & Attachment A - Definitions [Pages 37-38 and A-8]	<p>The definition of receiving water limitation includes any applicable numeric or narrative water quality objective or <i>criterion</i> contained in the “water quality control plan for the Los Angeles Region (Basin Plan), water quality control plans or <i>policies</i> adopted by the State Water Board, or federal regulations, including but not limited to 40 C.F.R. § 131.38.” Draft Permit, p. A-8 (emphasis added).</p> <p>The reference to “policies” adopted by the State Water Resources Control Board is ambiguous. The State Board adopts water quality objectives and water quality control plans, not policy resolutions. See Water Code § 13170. It is not clear what is meant by policies.</p> <p>Additionally, the definition should not reference “criterion” under federal regulations. Permittees are not required to comply with federal water criteria. A Permittee is only required to comply with water quality standards adopted by the state or federal government that are applicable to the particular waterbody. In referring to “criterion” that might be under federal regulations, the definition could be construed as referring to criteria with which Permittees are not required to comply. It creates ambiguity in the definition.</p> <p><u>Recommendation</u> The reference to “policies” adopted by the State Board and “criterion” should be deleted from the definition of receiving water limitation.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
40	Coordinating Receiving Water and Storm water Outfall Monitoring	VI.C.1.c. & VIII.B.1.b.iv; Attachment F – XIII.C.2 [Pages E-15, E-18, & F-108]	<p>The draft Permit proposes to require taking receiving water samples within 6 hours of taking storm water outfall samples. Coordinating trigger conditions between many outfall and receiving water sites will be time consuming and burdensome, requiring complex telemetry and data management systems to ensure that triggering times are coordinated. This condition is too prescriptive.</p> <p>This section could create conflicts if a Permittee decides to submit an IMP and other Permittees within the watershed submitted a CIMP. The trigger for sampling in the receiving water for the IMP and the CIMP could be different and therefore generate inconsistent results.</p> <p><u>Recommendation</u> Eliminate this requirement and allow affected agencies to coordinate trigger conditions between outfall and receiving water sites using an approach that is reasonable and practical. The IMP or CIMP would include recommendations on the start of receiving water monitoring in relation to the start of outfall-based monitoring.</p>
41	MS4 Map	VII.A [Page E-16]	<p>“MS4 Map” appears to be a misnomer. MS4 also includes municipal streets, curb and gutters, ditches, etc. If only open channels and underground storm drains are required to be mapped, “MS4” map should be revised.</p> <p><u>Recommendation</u> Revise to “Storm Drain and Channels Map.”</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
42	Prioritized Source Identification	IX.E.2 & Attachment F – XIII.F [Pages E-21 – E-22 & F-122]	<p>"The schedule shall ensure that source IDs are conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this order and 100% of the outfall within 5 years of the effective date of this order."</p> <p>Outfall inventory activities are ongoing and can change over time. For example if 10 outfalls are found in 2012, then by 2017, all 10 should be source ID'ed. Current language doesn't account for outfalls that may have new sources of non-stormwater discharges. For example, 50 outfalls are found in 2017. Does this mean all 50 have to be sourced ID'ed that same year, based on it being 5 years from the effective date of the order?</p> <p><u>Recommendation</u> This provision should be reworded as follows: "The schedule shall ensure that source IDs are conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this order <u>25% of outfalls are source ID'ed from date of inventory</u>, and 100% of outfalls within 5 years of the effective date of this order <u>are source ID'ed from date of inventory</u>."</p>
43	Rain Gauge Data Availability	XVIII A.2.a. [Page E-42]	<p>As written, the Permit requires that precipitation data shall be obtained from LACDPW rain gauge stations available on LA County Department of Public Works Water Resources Division's website. LACDPW maintains 148 manually observed non-mechanical (Standard) rain gages and 126 ALERT (Automatic Local Evaluation in Real Time)/Automatic rain gages. Only the ALERT gauges can provide the information being requested by the Regional Board. However, the ALERT gages are not considered official or final rainfall data, can be prone to transmission errors, and there is no guarantee of accuracy of the data provided. It should also be noted that it is not the LACDPW's mission or mandate to collect and provide rainfall data to other public agencies or to the public. Including such a requirement in the Permit in effect requires the LACDPW to do so. In the event of diminished fiscal resources, the number of locations monitoring by ALERT gauges may be reduced.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
43 (cont.)	Rain Gauge Data Availability	XVIII A.2.a. [Page E-42]	<u>Recommendation</u> Revise as follows: "Precipitation data shall be obtained <u>may be requested</u> from Los Angeles County Department of Public Works."

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
44	Introduction	Fact Sheet [Page F-3]	<p>The second paragraph in the introduction to the Fact Sheet states:</p> <p>This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California. Only those sections or subsections of this Order that are specifically identified as “not applicable” have been determined not to apply to the Dischargers covered by this Order. Sections or subsections of this Order not specifically identified as “not applicable” are fully applicable to the Dischargers.</p> <p>The LACFCD has concerns regarding this statement, as a number of provisions in the Permit do not apply to various dischargers. For example, provisions relating to industrial/commercial facilities and new development, among others, do not apply to the LACFCD, since it is not a municipality and has no governmental authority over businesses or residences.</p> <p><u>Recommendation</u> Revise as follows:</p> <p>“This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California.” Only those sections or subsections of this Order that are specifically identified as “not applicable” have been determined not to apply to the Dischargers covered by this Order. Sections or subsections of this Order not specifically identified as “not applicable” are fully applicable to the Dischargers.</p>
45	Use of LACFCD area as jurisdictional boundary	Tables F-1, F-3, F-4 [Page F-3, F-14, F-18]	<p>The current language, “...84 incorporated cities within the Los Angeles County Flood Control District...” appears to imply the LACFCD has jurisdiction or oversight over the municipalities. The LACFCD boundary is merely a service area boundary. See Comment No. 6.</p> <p><u>Recommendation</u> Revise to read:</p> <p>“...84 incorporated cities within the Los Angeles County Flood Control District”</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
45 (cont.)	History of LACFCD	II.A. [Page F-5]	<p>The first full paragraph on F-5, relating to the history of the LACFCD and the development of the MS4, contains numerous errors. In fact, the genesis of the LACFCD was serious flooding that occurred in 1914, prior to major development of the Los Angeles County watersheds.</p> <p><u>Recommendation</u> We request that the existing paragraph be replaced by the following:</p> <p>“As a result of serious flooding which affected Los Angeles County in 1914, the legislature adopted the Los Angeles County Flood Control Act in 1915, which created the LACFCD. Due to the location of the urbanized area in a coastal watershed adjacent to steep local mountain ranges, serious Pacific Ocean storms created frequent flooding conditions. Starting in the 1930s, federal funding through the U.S. Army Corps of Engineers allowed for the re-routing of the many of the historic waterways in the County and their redevelopment with engineered channels, including their lining with concrete.”</p>
46	Facility Description	II.A. [Page F-5]	<p>The current language, “The Los Angeles County Flood Control District boundaries encompass...85 incorporated cities...and approximately 2.1 million land parcels” appears to imply the LACFCD has jurisdiction or oversight. The LACFCD is merely a service area boundary. See Comment No. 45 above.</p> <p><u>Recommendation</u> Revise to read: “The Los Angeles County Flood Control District boundaries <u>service area</u>...”</p>
47	LACFCD Facilities	II.A. [Page F-6]	<p>The first and third full paragraphs describe facilities owned or operated by the LACFCD. These facilities are very limited and occupy a tiny area of the entire urbanized watershed. Various large municipalities that are Permittees, such as the City of Los Angeles, operate extensive maintenance yards and facilities as well as numerous city-owned buildings that are more extensive than those operated by the LACFCD. There is no justification for the description of LACFCD facilities being included in the Fact Sheet, and these references should be deleted.</p> <p><u>Recommendation</u> Delete first and third paragraphs on F-6.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
48	LACFCD Infrastructure	II.A. [Page F-6]	<p>On F-6, the second full paragraph states in part:</p> <p>The Los Angeles County Flood Control District’s infrastructure receives storm water and non-storm water flows from various sources. These flows come from MS4s owned by other Permittees covered by this Order and other public agencies that connect to the Los Angeles County Flood Control District’s infrastructure, NPDES permitted discharges, discharges authorized by the USEPA (including discharges subject to a decision document approved pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)), groundwater, and natural flows.</p> <p>These sentences are erroneous. The MS4 is operated by multiple Permittees, including the LACFCD, and each of these MS4s “receive storm water and non-storm water flows from various sources.” Again, the MS4 includes the streets and gutters, so every Permittee’s MS4 receives such non-stormwater and stormwater flows. It is thus inaccurate to specify the role of that part of the MS4 operated by the LACFCD. We request that this statement be corrected as follows:</p> <p><u>Recommendation</u> We request that this statement be corrected as follows:</p> <p>“The <u>MS4s subject to this Order</u> Los Angeles County Flood Control District’s infrastructure receives storm water and non-storm water flows from various sources. These flows <u>include flows that</u> come from MS4s owned by other Permittees covered by this Order and other public agencies that connect to the Los Angeles County Flood Control District’s infrastructure, NPDES permitted discharges, discharges authorized by the USEPA (including discharges subject to a decision document approved pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)), groundwater, and natural flows.”</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
49	LACFCD ROWD	III.D.1.a. [Page F-15]	<p>The last sentence in the first paragraph on F-15 states that the “Regional Water Board also evaluated the LACFCD’s 2010 ROWD and found that it too did not satisfy federal requirements nor reflect the current status for MS4s.”</p> <p>The Regional Water Board has not provided the LACFCD with any written evaluation of the 2010 ROWD. Given this fact, this sentence should be deleted.</p> <p><u>Recommendation</u> Delete last sentence of paragraph.</p>
50	LA County MS4	III.D.1.a.i. [Page F-15]	<p>In subparagraph i. on F-15 regarding the factors evaluated by the Regional Water Board in evaluating the five ROWDs and the structure for the Permit, it is stated that the “Los Angeles County MS4” is “controlled in large part by the Los Angeles County Flood Control District, among others . . .” For reasons stated above, this statement is incorrect.</p> <p><u>Recommendation</u> Delete the clause “controlled in large part by the Los Angeles County Flood Control District, among others,”.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
51	Description of Assembly Bill 2554	III.D.1.a.iii. [Page F-16]	<p>Subparagraph iii on page F-16 consists of a discussion about Assembly Bill 2554 that is inaccurate and misleading. It is inaccurate in that the legislation does not authorize a parcel tax, it authorizes a property-related fee or charge. Further, the legislation requires that if any fee should be imposed, fifty percent of the fee revenues would be allocated to nine watershed authority groups as described, forty percent would be allocated to the cities and unincorporated areas subject to the fee for water quality improvement programs, and the LACFCD would retain ten percent of the fee revenues to administer the program and implement its own water quality improvement plans.</p> <p>In addition, the discussion of Assembly Bill 2554 is incorrect and misleading because the Regional Board should not be considering this legislation "in evaluating the five separate ROWDs and the structure of this Order." No fee under the bill has been adopted and there can be no expectation that any such fee will be adopted, so it would be improper for the Regional Board to consider that revenues from such a fee will be available to any permittees to fund work required by the Permit.</p> <p>The legislation merely provides limited authority for the LACFCD to impose a fee as described above. A fee cannot be imposed unless it has first been considered by the LACFCD's Board of Supervisors at a public hearing at which the property owners subject to the fee have the right to submit protests. If no majority protest is received and the Board of Supervisors approves the fee, it must then be submitted for voter approval at an election. The fee must be approved by either a majority vote of the property owners subject to the fee or a two-thirds vote of the electorate. These are significant hurdles to imposition of such a fee, and none of the steps outlined above have taken place.</p> <p><u>Recommendation</u></p> <p>Delete subparagraph iii on page F-16.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
52	LACFCD Request to No Longer be Designated Principal Permittee	III.D.1.a.v. [Page F-16]	<p>Under subparagraph v., it is stated that</p> <p>The LACFCD has also requested that if the Regional Water Board does not issue an individual permit to the LACFCD, that it is no longer designated as Principal Permittee and relieved of Principal Permittee responsibilities.</p> <p>This statement is incorrect. LACFCD requested that it no longer be designated as Principal Permittee, but not in return for not being issued an individual permit.</p> <p><u>Recommendation</u> Delete this sentence.</p>
53	Rationale for Issuance of a Single Permit	III.D.1.a. [Pages F-16 – F-17]	With respect to the rationale for issuance of a single Permit set forth on pages F-16 and F-17 of the Fact Sheet, see comments regarding the issuance of an LACFCD Permit, above, which set forth the legal rationale for requiring individual MS4 permits and are incorporated herein.
54	LACFCD as Primary Owner and Operator of LA MS4	III.D.1.a. [Page F-17]	<p>On F-17, it is stated:</p> <p>The Regional Water Board also determined that as the primary owner and operator of the Los Angeles County MS4, the LACFCD should remain a Permittee in the single-system wide permit; however, this Order relieves LACFCD of its role and responsibilities as Principal Permittee. This Order also specifies certain requirements specific to the LACFCD in its role as the owner and operator of the majority of the Los Angeles County MS4.</p> <p>It is erroneous to term the LACFCD as the “primary owner and operator” of the MS4 or that it is the “owner and operator of the majority of the Los Angeles MS4.” The MS4 is comprised of more than 30,000 miles of infrastructure, of which the LACFCD operates less than an estimated 10 percent. We request that the Fact Sheet language be modified as follows, with the understanding that the LACFCD does not waive its opposition to being included in the Permit without a chapter specifying the limits of its responsibilities under the Permit:</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
54 (cont.)	LACFCD as Primary Owner and Operator of LA MS4	III.D.1.a. [Page F-17]	<p><u>Recommendation</u> We request that this language be corrected as follows:</p> <p>The Regional Water Board also determined that as the primary owner and operator of the Los Angeles County MS4, the LACFCD should remain a Permittee in the single-system wide permit; however, this Order relieves LACFCD of its role and responsibilities as Principal Permittee. This Order also specifies certain requirements specific to the LACFCD in its role as the owner and operator of the majority of the Los Angeles County MS4.</p>
55	Non-Storm Water Discharges Regulations	IV.A.3 [Page F-22]	<p>Section IV.A.3 uses language from the preamble the federal stormwater regulations to support an argument that “regulation of non-storm water discharges through an MS4 is not limited to the MEP standard in CWA section 402(p)(3)(B)(iii).”</p> <p>The preamble language quoted in this section defines “illicit discharge.” However, the actual definition of “illicit discharge,” contained in the Code of Federal Regulations, does not support this argument. “Illicit discharge” is defined in 40 CFR section 122.26(b)(2) to be: “Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” (emphasis supplied). The plain language of this regulation controls over ambiguous comments in the Preamble.</p> <p>The use of “through” in the Preamble is ambiguous in this context, since the question being addressed in Section IV.A.3 are discharges “from the MS4.” And, other Preamble language contradicts the conclusions in Part IV.A.3 by indicating that the discharge from an MS4 system is also composed of “non-stormwater discharges.” See comment on Section IV.A.1 of the Fact Sheet, above.</p> <p><u>Recommendation</u> Section IV.A.3 should be deleted.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
56	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Discharges	IV.A.5 [Pages F-25 & F-26]	See Comment No. 16.
57	CERCLA Discharger Requirements & Notification of Unplanned CERCLA Discharge	IV.A.5 [Page F-25]	<p>The fact sheet contains USEPA requirements for CERCLA dischargers when discharging into the MS4. Such requirements should be part of the Tentative Order, not just the fact sheet. In addition, notification for unplanned dischargers must be made no later than 24 hours after the discharge has occurred. Notification for unplanned discharges, even if they are emergency discharges, must be made immediately. Such large-volume discharges will not only impact operations, but threaten the safety of MS4 Permittee field personnel that may be working within the storm drain system.</p> <p><u>Recommendation</u> Replace “unplanned” with “emergency”, and remove “but no later than 24 hours after the discharge has occurred).”</p>
58	Segregation of Non-Storm Water Discharges	IV.A.5 [Page F-26]	See Comment No. 17.
59	Notification of Discharge from Utility Vaults and Underground Structures	IV.A.5 [Page F-27]	The fact sheet notes that dischargers permitted under NPDES No. CAG990002 are require to contact the appropriate Permittee(s) within 24 hours whenever there is a discharge of 50,000 gallons or more from utility vaults and underground structures to the MS4. The LACFCD has a process that requires notification of up to 72 hours in advance of the discharge. Depending on the discharge location and volume, the discharger may have to apply for a Flood Permit to discharge to LACFCD’s system.

**Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001**

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
59 (cont.)	Notification of Discharge from Utility Vaults and Underground Structures	IV.A.5 [Page F-27]	<u>Recommendation</u> Remove “within 24 hours” from the notification requirement. Dischargers should contact the impacted MS4s to obtain all necessary authorizations to discharge.
60	Cleaning of MS4 Inlets and Outlets	IV.A.5 [Page F-27 – F-28]	See Comment No. 18.
61	BMPs for Discharges from Non-Commercial Car Washing	IV.A.5 [Page F-29]	The fact sheet includes BMPs not listed in Table 8 of the Tentative Order. <u>Recommendation</u> Remove “....creating a temporary berm or block off the storm drains; using pumps or vacuums to direct water to pervious areas;...”
62	Illicit Discharge Source Investigation and Elimination – Diversion or Treatment	VI.C.9.b [Page F-78]	See Comment No. 34.
63	LACFCD Not Principal Permittee	XII.E.3 [Page F-107]	The tentative order cites the LACFCD’s lack of ownership or control over land from which most pollutants originate as the reason for relieving it of the Principal Permittee role. Although it is true that the LACFCD does not have land use authority, the reason it will no longer be the Principal Permittee because the request was made in the ROWD submitted November 2011.
64	Coordinating Receiving Water and Outfall Monitoring	XIII.C.2 [Page F-108]	See Comment No. 40.
65	Storm Drain System Map	XIII.D [Page F-110]	The mapping requirements included land use, impervious area, and effective impervious area (if available).

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
65 (cont.)	Storm Drain System Map	XIII.D [Page F-110]	<u>Recommendation</u> Remove “impervious area” from the mapping requirements.
66	Prioritized Source Identification	XIII.F [Page F-112]	See Comment No. 42.
67	Funding Sources – Assembly Bill 2554	XIV.D. [Pages F-142 – F-143]	<p>The Fact Sheet’s discussion of funding sources (Pages F-142 and F-143) is in part inaccurate and misleading and should be deleted because there is no assurance that the fee will be adopted. First, Assembly Bill 2554 is not awaiting voter approval; it was adopted by the Legislature and became law on January 1, 2011. This legislation gave the LACFCD the authority to impose a fee for projects to improve water quality and reduce stormwater and urban runoff pollution within the LACFCD's jurisdiction.</p> <p>Second, no such fee has been imposed by the LACFCD and it cannot be imposed unless it has first been considered by the LACFCD's Board of Supervisors at a public hearing at which the property owners subject to the fee have the right to submit protests. If no majority protest is received and the Board of Supervisors approves the fee, it must then be submitted for voter approval at an election. The fee must be approved by either a majority vote of the property owners subject to the fee or a two-thirds vote of the electorate.</p> <p>Contrary to the Fact Sheet, no such fee is currently awaiting voter approval. The LACFCD's Board of Supervisors has only directed the LACFCD to prepare a proposal for a fee and to provide notice of a public hearing on the fee to all the property owners in the LACFCD's jurisdiction who would be subject to the fee. That hearing and opportunity to protest has not occurred, and the Board has not approved a fee or set it for the required election. An Engineer's Report is in preparation to calculate the fee amount each property owner would be required to pay annually should the Board of Supervisors decide to propose a fee and submit it for voter approval. The Board, however, has not yet determined the amount of the proposed fee, held the required public hearing, approved the fee or set an election on the fee.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
67 (cont.)	Funding Sources – Assembly Bill 2554	XIV.D. [Pages F-142 – F-143]	<p>If all these steps are taken and a proposed fee receives the necessary voter approval, state law requires the LACFCD to allocate 40% of the revenues collected to all the cities within the boundaries of the LACFCD and 50% of the revenues to nine watershed authority groups that would be created to implement collaborative water quality improvement plans or programs in the watersheds. The LACFCD would retain 10% of the fee revenues to administer the program and implement its own water quality improvement plans.</p> <p>The revenue estimates provided in the Fact Sheet are speculative and are inconsistent with the preliminary projections prepared by LACFCD staff. Furthermore, the projected revenues are not "earmarked" for specific programs; the cities and watershed authority groups receiving 90% of the fee revenues would determine the uses of the fee revenues, subject to the limitations of the legislation and any implementing ordinance or regulations adopted by the County Board of Supervisors.</p> <p><u>Recommendation</u> Delete the discussion of AB 2554.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G. Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
68	General – Setting Non-Storm Water Action Levels (NAL)	[Pages G-1 ~ G-16]	<p>The proposed non-storm water action levels are the same as water quality objectives. Because the purpose of action levels is to identify the worst problems and prioritize actions, these action levels should be set at a higher level.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>
69	General – Pollutants with Non-anthropogenic Sources	[Pages G-1 ~ G-16]	<p>Pollutants that are known to be dominated by, or heavily contributed by, natural sources should not be used as action levels: e.g., Sulfate, Cyanide, Selenium, Nickel, Cadmium, Aluminum, TSS, pH, etc.</p> <p><u>Recommendation</u> Remove Action Levels for these pollutants.</p>
70	General – Setting Municipal Action Levels (MAL)	[Pages G-17 ~ G-18]	<p>The Municipal Action Levels are currently set at the 75th (upper 25th) percentile values (based on the Correction to Attachment G issued by the Regional Water Board on June 19, 2012). We appreciate this correction; however MALs should be set using the 90th (upper 10th) percentile values to allow for true prioritization of follow-up actions, which is the approach used in the San Diego Permit.</p> <p><u>Recommendation</u> Set MALs using the 90th percentile values.</p>
71	MAL for pH	VIII. [Page G-17]	<p>The MAL for pH is set at 7.7; allowable values for pH have always been set as a range.</p> <p><u>Recommendation</u> Set the MAL for pH to values outside of range 6.0–9.0.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G. Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
72	Criteria for Submitting a MAL Action Plan	VIII. [Page G-17]	<p>The draft Permit states: “Beginning Year 3 after the effective date of this Order, each Permittee shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2013 Annual Report) to the Regional Water Board EO, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4.”</p> <p>If the effective date of the Order is October 2012, October 2012 would be the beginning of Year 1, and October 2013 would be the beginning of Year 2, not Year 3. The MAL Action Plan should be submitted with the December 15, 2014 Annual Report.</p> <p>In addition, the time period for determining the “running average” should be clarified.</p> <p><u>Recommendation</u> Revise the due date for submission of the first MAL Action Plan to December 15, 2014. Clarify the time period used for determining the MAL “running average”.</p>
73	Shellfish Criteria for Total Coliform Bacteria NAL	Tables G-3, G-4, G-7, G-8, G-11, G-15, G-16, G-20, G-23, & G-24 [Pages G-2 ~ G-14]	<p>Non-Storm Water Action Levels for Total Coliform Bacteria currently are set to the water quality objectives for shellfish harvesting. Because the purpose of action levels is to identify the worst problems and prioritize actions, these action levels should be set to a higher level.</p> <p>Most if not all watersheds within the greater Los Angeles Region are impaired for bacteria. Available monitoring data show the REC-1 criteria for Daily Maximum, 10,000/100ml, are already frequently exceeded. Setting the NALs even lower would be counter to the intent of prioritization.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G. Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
74	Drinking Water (Municipal and Domestic Supply [MUN]) Criteria for Methylene Blue Active Substances (MBAS), Nitrite, Turbidity, and Aluminum	Tables G-1, G-3, G-5, G-6G-7, G-21, G-22, & G-23 [Pages G-2 ~ G-12]	<p>Non-Storm Water Action Levels for MBAS, Nitrite, Turbidity, and Aluminum currently are set to the water quality objectives for drinking water (MUN). Because the purpose of action levels is to identify the worst problems and prioritize dry-weather monitoring of outfalls and taking appropriate follow-up actions, these action levels should be set to a higher level. Drinking water (end-of-tap) criteria should not be used as end-of-pipe criteria or as action levels for the MS4. Setting the NALs even lower is counter to the intent of prioritization.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>
75	General	Tables G-2, G-6, G-10, G-14, & G-22 [Pages G-2 ~ G-12]	<p>There are several references to "Table H-#" throughout the attachment. Correct as necessary.</p> <p><u>Recommendation</u> Correct references to "Table H-#" to "Table G-#."</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
76	Permittees and TMDLs Matrix	Table K-1. [Page K-1]	<p>As previously commented, for the Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL, the Los Angeles County Flood Control District (LACFCD) should not be listed as a responsible agency because these waterbodies are located outside of the LACFCD's service area and the TMDLs themselves do not identify the LACFCD as a responsible agency.</p> <p><u>Recommendation</u> Remove the LACFCD as a Permittee under the Lake Elizabeth, Munz Lake, and Lake Hughes Trash TMDL.</p>
77	Permittees and TMDLs Matrix	All Trash TMDLs	<p>With respect to the Los Angeles River Trash TMDL, the Los Angeles Flood Control District is not listed as a responsible agency since the scope of its participation is limited solely to issuing permits and not reducing Wasteload Allocations.</p> <p>Similar to the reasoning used with respect to the Los Angeles River Trash TMDL, the Los Angeles Flood Control District should not be listed as a responsible agency for all trash TMDLs.</p> <p><u>Recommendation</u> Remove the LACFCD as a Permittee under all trash TMDLs.</p>
78	Machado Lake Trash TMDL	TMDL Provisions for the Dominguez Channel [Page N-2]	<p>As previously commented, the tentative order assigns a numerical value for trash generation rate of 5,334 gallons of uncompressed trash per square mile per year. Therefore the LACFCD is to reduce 16.41 gallons of uncompressed trash to zero by 3/6/2016. This is inconsistent with the method used in the Basin Plan Amendment.</p> <p><u>Recommendation</u> The LACFCD should not be assigned a trash generation rate since the LACFCD property does not generate trash.</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
79	LACFCD is not a Permittee for the Dominguez Channel Toxics TMDL	Tables K-4, K-5, and K-6 [Pages K-4 – K-9]	<p>The LACFCD should be removed as a Permittee subject to the provisions of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL.</p> <p>Attachment K, Tables K-4, K-5, and K-6, identify the LACFCD as Permittees subject to the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. This designation violates the Amended Consent Decree entered on August 24, 1999 by the United States District Court in <i>United States v. Montrose Chemical Corporation, et al.</i>, Case No. CV90-3122-AAH (JRx) (see Exhibit N - Amended Consent Decree).</p> <p>In 1999 the United States and the State of California settled a lawsuit with local governmental entities over the environmental condition of the Dominguez Channel and the Los Angeles and Long Beach Harbors. The lawsuit was brought by the United States on behalf of the United States Environmental Protection Agency, the Department of the Interior and the National Oceanic and Atmospheric Agency, and by the State of California on behalf of the State Lands Commission, the Department of Fish & Game, the Department of Parks and Recreation, the Department of Toxic Substances Control and the Los Angeles Regional Water Quality Control Board.</p> <p>The settlement is set forth in the Amended Consent Decree. The County and the LACFCD are two of the parties to this settlement. The Regional Board also was a party, with the Executive Officer signing the Amended Consent Decree on behalf of the Regional Board.</p> <p>The Amended Consent Decree resolved all liability of the settling local governmental entities for all natural resource damages with respect to the “Montrose NRD Area” and all response costs incurred in connection with the “Montrose NPL Site” (Amended Consent Decree, p. 19). The Montrose NRD Area was defined to include the Los Angeles and Long Beach Harbors (Amended Consent Decree, ¶ 6.J). The Montrose NPL Site was defined to include the Torrance Lateral, the Dominguez Channel from Laguna Dominguez to the Consolidated Slip, and that portion of the Los Angeles Harbor known as the Consolidated Slip (Amended Consent Decree, ¶ 6.I.).</p>

Los Angeles County Flood Control District Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
79 (cont.)	LACFCD is not a Permittee for the Dominguez Channel Toxics TMDL	Tables K-4, K-5, and K-6 [Pages K-4 – K-9]	<p>Under the Amended Consent Decree, the Regional Board explicitly agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, for any civil or administrative liability for natural resource damages (Amended Consent Decree, ¶ 11). Natural resource damages were defined to include loss of use, restoration costs and resource replacement costs, among other costs (Amended Consent Decree, ¶ 6.L).</p> <p>The Regional Board also agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, to compel response activities or to recover response costs in connection with the Montrose NPL site (Amended Consent Decree, ¶ 17). Response costs were defined to include all costs of response as provided in 42 U.S.C § 9607(a)(1-4)(A) and as defined by 42 U.S.C § 9601(25). (Amended Consent Decree, ¶ 6.M). These response activities and costs included activities to remove hazardous substances from the environment, to monitor, assess, and evaluate the release or threat of release of hazardous substances (see 42 U.S.C. §9601(23)), and actions consistent with a permanent remedy such as diversions, dredging and excavations (see 42 U.S.C. §9601(24)).</p> <p>The Permit’s imposition of obligations on the LACFCD to comply with the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Water Toxic Pollutants TMDL, including the requirement to comply with the concentration-based effluent limitations for pollutant concentrations in the sediment, violates the Amended Consent Decree. Under the Amended Consent Decree, the Regional Board has explicitly agreed that it will not require the County and LACFCD to take these and other actions (Amended Consent Decree, ¶¶ 11 and 17).</p> <p><u>Recommendation:</u> Delete the designation of the LACFCD as subject to the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL in Attachment K, Tables K-4, K-5, and K-6.</p>

Exhibits for LACFCD Comments on Draft Tentative Order

- Exhibit A - Transmittal & Comments on TMDL and Monitoring Sections (Workshop 1-23-12).pdf
- Exhibit B - MCM Working Proposal Comments - County of LA 4-12-2012.pdf
- Exhibit C - RB MCM Draft Language Comments FINAL (Discharge Prohibitions).pdf
- Exhibit D - LA County and LACFCD Comments on Working Proposals [RWL-TMDL-WMP 5-14-12].pdf
- Exhibit E - NACWA 1-28-11 Municipal Letter to EPA & 3-30-12 EPA Response.pdf
- Exhibit F - LACMS4 Redlined TMDL Excerpts 20Jul2012Rev.docx
- Exhibit F - LACMS4 Redlined TMDL Excerpts 20Jul2012Rev.pdf
- Exhibit G - State Water Board Blue Ribbon Panel Final Report.pdf
- Exhibit H - Outfall Data Summary.pdf
- Exhibit I - Stockton Summary 2012-07-20.pdf
- Exhibit J - CASQA proposal - Receiving Water Limitation Provision to Stormwater NPDES Permits.pdf
- Exhibit K - TMDLs into SW Permits Review 20Jul12.pdf
- Exhibit L - storm drain unincorporated_6x4 (A1).pdf
- Exhibit M - RWQDB Francine Diamond Letter 1-30-2002.pdf
- Exhibit N - Amended Consent Decree.pdf
- Exhibit O - MCM Working Proposal Comments - LACFCD 4-12-2012.pdf
- Exhibit Q - Comments TM LACMS4 TMDLs 21Jul2012.pdf
- Exhibit R - TMDL Compliance Assessment 21Jul2012.pdf
- Exhibit S - Clearer Structure, Cleaner Water (Little Hoover).pdf
- Exhibit T - nrc_stormwaterreport.pdf

Exhibits for LACFCD Comments on Draft Tentative Order

- Exhibit U - Smail et al 2012_EST_Metal contamination in Bight after CWA implementation.pdf
- Exhibit V - Proposed LACFCD Findings for 2012 MS4 permit (clean).docx
- Exhibit W - FCD Chapter (Proposed MCM) 5-1-12 (rev2).docx



July 23, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Lakewood submits the following comment letter on the draft permit for the Los Angeles region. While the city supports the goals of improving surface water quality in our region, we would encourage the Los Angeles Regional Water Control Board to base all regulations on sound science, methodology, and to proceed in a manner that is not only practical but one that is achievable and cost-effective.

The City does not have a dedicated revenue source or enterprise fund to finance the storm water program. Propositions 13, 62, and 218, require that any storm water fee or tax be placed before the general electorate for approval. The laws further define most storm water fees as special taxes, subjecting them to a 2/3rd's voter approval. In these difficult economic times, Lakewood would have a difficulty of obtaining voter approval for a new special tax. It is therefore likely that Lakewood will need to finance the new permit with its General Fund. Our General Fund supports a variety of critical services, including sheriff, fire, public works, public facilities, street maintenance, and park maintenance. Absent new voter approved funds, the City will be required to reduce, eliminate or defer existing critical services to pay for the new storm water mandates in the permit.

Rather than restating the numerous technical comments, the City of Lakewood concurs with the issues addressed by the LA Permit Group (LAPG) comment letter dated July 23, 2012 sent to your attention, as if fully detailed herein.

In summary, I would like to thank the Los Angeles Regional Water Control Board for providing this opportunity to comment on the draft permit. Achieving compliance with this permit will be a complex, long-term and an extremely costly effort.

Sincerely,

A handwritten signature in blue ink that reads "Lisa A. Rapp".

Lisa A. Rapp
Director of Public Works

cc: Mayor and Council
City Manager
City Attorney

Lakewood



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July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

LAMS42012@waterboards.ca.gov
rpurdy@waterboards.ca.gov
iridgeway@waterboards.ca.gov

Dear Mr. Ridgeway:

The City of La Mirada ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001 ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of La Mirada, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our City management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of California Cities conference in San Diego.

The extreme speed with which the Permit is being circulated, reviewed, and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. See *Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. See, e.g., *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will

result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution California also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” See also *City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. See *Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has **removed** the constitutional police power of the City to regulate” in the area); see Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in

this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the "Maximum Extent Practicable" ("MEP") standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. See *City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
 - The public information and participation program (Permit at pp. 58-60);
 - The industrial/commercial facilities program (Permit at p. 63);
 - The public agency activities program (Permit at pp. 56-63); and
 - The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).
-

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (See, e.g., Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover

substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the

Regional Board is unreasonable. It is not just limited to each individual copermitee's discharge. Rather, the Permit requires copermitees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. See Permit at p. 108.

6. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter into Contracts and Coordinate With Other Co-Permittees

The Regional Board cannot require the City to enter into agreements or coordinate with other co-permittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. See Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include "[e]conomic considerations" with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. See Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the co-permittees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

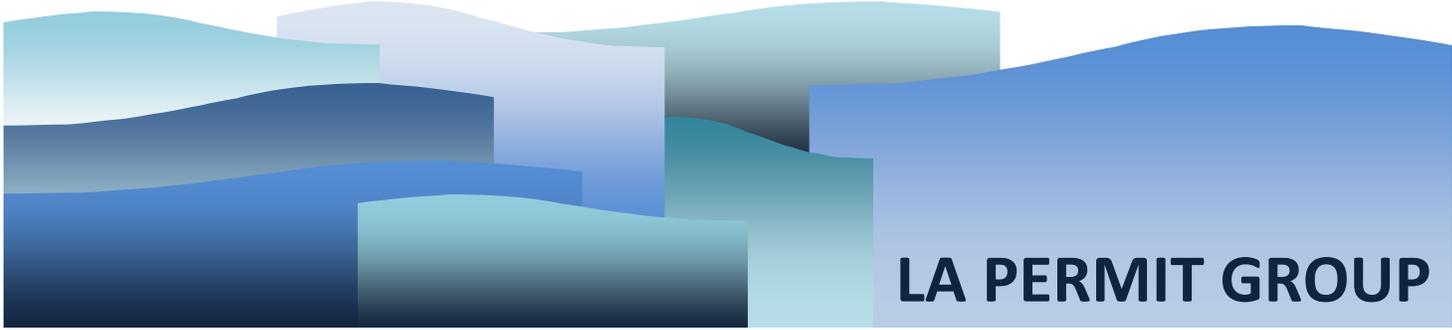
Sincerely,

CITY OF LA MIRADA



Steve Forster
Public Works Director

SF:jb



LA PERMIT GROUP

July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

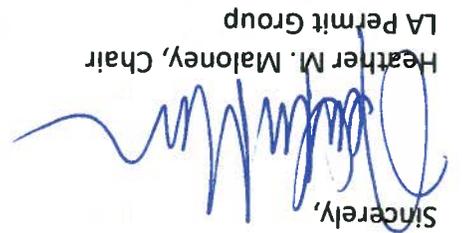
As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, we respectfully request that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document. We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

Exhibit A

LA Permit Group

City of Agoura Hills	City of Gardena	City of Pico Rivera
City of Alhambra	City of Glendale	City of Pomona
City of Arcadia	City of Glendora	City of Redondo Beach
City of Artesia	City of Hawthorne	City of Rolling Hills
City of Azusa	City of Hermosa Beach	City of Rolling Hills Estates
City of Baldwin Park	City of Hidden Hills	City of Rosemead
City of Bell	City of Huntington Park	City of San Dimas
City of Bell Gardens	City of Industry	City of San Gabriel
City of Bellflower	City of Inglewood	City of San Marino
City of Beverly Hills	City of La Verne	City of Santa Clarita
City of Bradbury	City of Lakewood	City of Santa Fe Springs
City of Burbank	City of Lawndale	City of Santa Monica
City of Calabasas	City of Los Angeles	City of Sierra Madre
City of Carson	City of Lynwood	City of South El Monte
City of Claremont	City of Malibu	City of South Gate
City of Commerce	City of Manhattan Beach	City of Torrance
City of Covina	City of Monrovia	City of Vernon
City of Culver City	City of Montebello	City of West Covina
City of Diamond Bar	City of Monterey Park	City of West Hollywood
City of Duarte	City of Paramount	City of Westlake Village
City of El Monte	City of Pasadena	

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Agency/Reviewer: LA Permit Group

Comment No.	Doc. Reference		Comments	
	Page	Section	Apr-12	Jul-12
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards .</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofitting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers . Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

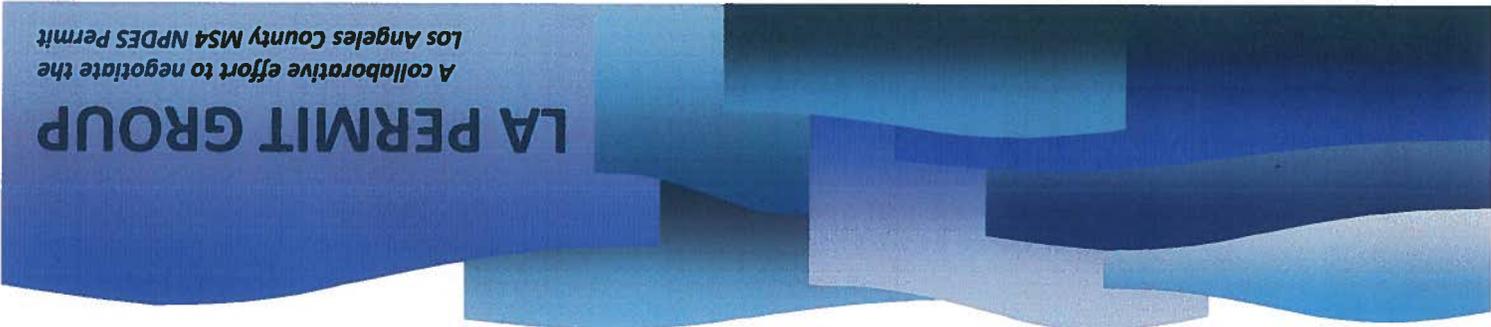
17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>"7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s)."</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for "One of the monitoring events shall be during the month with the historically lowest instream flows." This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, "The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:" GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor "upstream of the actual outfall or downstream of a political boundary". Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit "except aquatic toxicity, which shall be monitored once per year...". This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include "natural flows" or "natural sources" as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, "100% of the outfalls in the inventory within 5 years..."

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals



February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However, the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

**LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12**

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:

- a. evaluates the current conditions in impaired water bodies (identified by effective TMDLs), facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- c. identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4
- d. promotes the IWMP and provides time schedule incentives.

The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. Pyrethroid Study. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. Hydromodification Study. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts¹. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. Low Impact Development Study. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort. *Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.*

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23?) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide 18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:

- a. Unclear how baseline non-stormwater flows are established.
- b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).
- c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

² Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

- d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.

- e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.
- f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.

- g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watersheds and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permittees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health³ or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

³ The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS, cont.

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLA, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a "one size fits all" approach.

- a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:

- i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
- ii. Runoff reduction BMPs;
- iii. Treatment control BMPs where effectiveness information is available;
- iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
- v. Research and development for pollutant types where effective BMPs have not been identified.

- b. These categories will be incorporated as part of the Stormwater Quality Management Plans.

- c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.

2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:

- a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
- b. specific procedures for evaluating BMP effectiveness; and
- c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEF given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

- "point sources", which are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA."
2. Define BMP-based WQBELs as "implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAS, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAS." This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
- Not submitting the SQMP.
 - Not implementing all elements of the SQMP in accordance with the approved schedule.
 - Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states "The Permittees shall comply with the following effluent limitations and/or receiving water limitations..." This is followed by tables with the numeric WLAs.

We have three concerns with this language:

- The language implies that the effluent limitations are strictly numeric.
- The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
- The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

EXHIBIT B

We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.

May 14, 2012

Renee Purdy

Regional Program Section Chief

Los Angeles Regional Water Quality Control Board

320 4th Street, Suite 210

Los Angeles, CA 90013

Ivar Ridgeway

Chief, Stormwater Permitting

Los Angeles Regional Water Quality Control Board

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Los Angeles, CA 90013

SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the

Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provide stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose to develop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAS, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAS.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAS solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹), State Board orders (Order

¹ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)² have affirmed that WLAS can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAS as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAS in NPDES permits³. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how the WLAS are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible⁴.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAS in this permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAS. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAS by implementing actions that they have estimated to be the best of their knowledge will result in achieving the WLAS and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAS are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAS, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

² "[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit." (Order WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

³ U.S. EPA, *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner* (Nov. 10, 2010).
⁴ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopening process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*⁵ (NRDC v. County of LA) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party lawsuits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

⁵ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

Beyond the legal/liability aspect of the receiving water limitations we would submit that in a practical sense the RWL works against the Watershed Management Program proposal. On the one hand the municipalities will develop watershed management programs that are based on the high priority water quality issues within the watershed. Consistent with the working proposal for the watershed management programs we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal the municipalities will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State there may be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms but according to the current RWL proposal, the municipalities must also address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectfully request that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it is important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Document Name: TMDL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference Page	Section	Comments	Rvwr (optional)	Author Response
1	5	B.1.c.(2)	Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.		
1	5	B.1.c.(2)	Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.		
1	5	B.1.c.(2)	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		

2		B.1.	<p>The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.</p>		
3		B.1.	<p>The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.</p>		
4	5	B.1.c.(3)	<p>Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".</p>		
5	1-6	B.1 throughout	<p>This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".</p>		

6	5	B.1.c(3)	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.		
7	6-7	B.2.	Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.		
8	7	B.3.	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]		
8	7	B.3.	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.		

9	7	B.3	<p>Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.</p>		
10	3	C.2.c)	<p>The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.</p>		

11	3	C.2.c)	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>		
12	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.</p>		
13	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.</p>		

14	3	C.3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		
15	4	C.5.a)	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.		
16	4-8	C.5.	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		
17	1, 3, 15	Attach I	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		
18	2	E.2.b.v.1.	Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."		

19	3	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."		
20	4	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.		
21	8	E.5.b.(c)	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.		
22	7	E.5.a.i-x	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?		
23	2	E.2.b.ii	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		
24	2	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.		

26	3	E.2.c.iii	For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopener purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.		
28	5	E.4.a	This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.		
29	12-13	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.		
30	7	E.5	Please clarify that cities are not responsible for retrofitting.		
31	4	E. 2. e	Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.		

32	4	E.3	Instead of TSO, please include mechanisms that allow for time to complete Basin Plan Amendments for EPA Established TMDLs. This will protect cities from unnecessary vulnerability and allow for these TMDLs to be incorporated into the Watershed Management Programs. Incorporate permit language that will reopen the LA MS4 upon completion of the Basin Plan Amendments necessary for coordination with these programs.		
33	Santa Clara River	A. 4 c)	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.		
34		1 E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
35			Santa Ana River TMDLs should be removed; this TMDL is eliminated		
36	9	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institutional controls will supplement full and partial capture to attain a determination of "zero" discharge.		
37	10	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.		
38	1 of 19	B	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.		
39	3 of 24	3.a)1	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.		
40	6 of 24	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.		
41	1 of 9	1.b	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.		
42	1 of 9	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations.		

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations-- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Document Name: Watershed Management Program Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment		Doc. Reference		Comments	Rvwr (optional)	Author Response
No.	Page	Section				
1	4	(4)		Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		
2	2, 11, 13	various		The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		
3	2, 3	Table and C.2.a - d		Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs		
4	4	C.3.a.iii		Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
5	9	(5)		Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility		
6	2	C.2		Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs		

7	9	(4)(c)	<p>While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than than number.</p>		
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Document Name: RWL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference		Comments	Rvwr (optional)	Author Response
	Page	Section			
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		



LA PERMIT GROUP

For more information please contact:
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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan.. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or pursue a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position² that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State's General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupportable. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

“MCMs for ID/IC”

The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges.

Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,


Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

**LOS ANGELES PERMIT GROUP COMMENTS
 MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
 LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
General			
1	2	C.1.c	<p>The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used:</p> <p><i>“Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p><i>“New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i></p> <p><i>“Redevelopment” means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
2	4	2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

3	4	2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
4	4	2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
5	5	2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible; to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
Fiscal Resources			
6	5	3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>

LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

7	5	3.a	<p>Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
Public Information and Participation Program			
8	6	6.a.iii	<p>Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
9	7	6.d.i.2.b	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
10	8	6.d.i.3	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
Industrial/Commercial Facilities Program			
11	10	7.b.i.4	<p>Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL..."</p> <p>As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICSs/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

12	10	7.b.ii.6	<p>Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility"</p> <p>Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."</p>
13	11	7.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>
14	17	7.e.i	<p>Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.</p>
15	17	7.e.i	<p>Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.</p>
Development Planning			
16	21	8.b.1	<p>This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.</p>
17	21	8.b.i.1.g	<p>Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.</p>
18	21	8.b.i.1.g	<p>The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.</p>
19	21	8.b.i.1.g	<p>Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

20	21	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	24	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)k)-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i(1) statement.
22	24	8.c.i.2	The SWQDv definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "... designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDv) defined as the runoff from all impervious surfaces that are generated by a:..."
23	24	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	24	8.c.i.5	Please define the term "wet-weather season".
25	24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	24	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscaping within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26	Table	The table provided lacks clarity and the use of M_v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26	Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	28	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDv will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the “peak flow control” requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E_p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

41	40	8.d.iv.b	This requirement should be limited to the sites already visited as part of the “critical sources” program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.
Development Construction			
42	41	9.d	Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.
43	41	9.e.1.i	Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.
44	42-43	9.f.ii	The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.
45	43	9.f.ii.3.i	An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.
46	43	9.f.ii.4	The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.
47	43	9.f.ii.5	The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permittees without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permittees are not made responsible parties for this activity.
48	43	9.f.ii.8	The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.
49	43-44	9.g.i	The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement.
53	48	9.h.ii.2	The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	50	9.h.ii.5.b	The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans." the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are install properly, and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

57	54	10.d	<p>Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards."</p> <p>This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.</p>
58	56	10.d.v	<p>Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.</p>
59	56	10.e.ii	<p>Staff proposal states: "Each Permittee shall implement the following measures for flood management projects"</p> <p>Flood management projects need to be clearly defined.</p>
60	60	10.g.ii.7	<p>Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters..."</p> <p>The method which a pesticide that causes "impairment" to waterbodies needs to be defined.</p>
61	62	10.h.iv.1.c	<p>Staff proposal states: "Provide clean out of catch basins... 24 hours after event"</p> <p>Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."</p>
62	63	10.h.vii.1	<p>This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.</p>
63	64	10.h.ix	<p>Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...."</p> <p>The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do “non-stormwater outfall-based monitoring program” as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a “non-stormwater outfall-based monitoring program”. Please revise each mention of “ <i>Each Permittee</i> ” to “Permittee/Permittees” to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving waterbody monitoring in-lieu of outfall monitoring.
65	-	11	A definition of “outfall” is required for clarity. An “outfall” for purposes of “non-stormwater outfall-based monitoring program” should be defined as “major outfall” pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of “ <i>outfall</i> ” to read “major outfall” when discussing “non-stormwater outfall-based monitoring program”.
66	68	11.a	Some small cities do not have digital maps. In the “General” category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, “ <i>Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time.</i> ” This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on “As-Built” drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. “The contributing drainage area for each outfall should be clearly discernable...” The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read “The name of all receiving water bodies from those MS4 major outfalls identified in (1).”
69	69	11.c.i	The LA Permit Group proposes “non-stormwater outfall-based monitoring program” to be flow based monitoring. Please revise item (4) of 11., c. i. to read “(4) monitoring flow of unidentified or authorized non-stormwater discharges, and...”
70	69	11.c.i.4	“Monitoring of unknown or authorized discharges” “Authorized” discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to “Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located.” It is not know if a discharge is illicit until the investigation is completed.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

72	70	11.d.ii	Please revise the proposed language to “At a minimum, each Permittee/Permittees shall initiate an investigation(s) to identify and locate the source within 48 hours of becoming aware of the suspected illicit discharge.” Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	“Illicit discharges suspected of sanitary sewage... shall be investigated first.” ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the “most toxic or severe threat to the watershed” shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to “If the source of the discharge is found to be authorized under a NPDES permit...” If the discharge is permitted, then it is not “illicit”.
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to “If the source of the illicit discharge has been determined to originate within a Permittee’s jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification.” “Non-stormwater” discharges do not equate to “illicit” discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to “If the source of the suspected illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall...” Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	<p>Please revise the proposed language <i>“the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.”</i> To “the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board.”</p> <p>In the case that an Illicit Discharge is ongoing, then the discharger can be identified and the responsibility to clean up and eliminate the discharge lies with the discharger. Any illicit discharge for which the Permittee has exhausted their Progressive Enforcement Policy should be deferred to the Regional Water Quality Control Board for additional Progressive Enforcement or permitting.</p>
78	71	11.e.i	Please revise the first sentence to “Permittee/Permittees, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days...” The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the “days of completion” from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

80	71	11.f.i	Revise the proposed first sentence to “Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point...” It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71 & 72	11.f.ii.1&2	Revise “PIPP” to “Hotline”. The subject of this item is “reporting hotline requirements”.
82	72	11.f.iii	Omit this section. “No Dumping” signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, “The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee.” This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to “Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority.” Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bioretention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	<p>RB staff proposed language requires the permittees to “effectively prohibit non-stormwater discharges into the MS4 and from the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p style="text-align: center;"><i>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges²:</p> <p style="text-align: center;"><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water</i></p>

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

² 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
			<p><i>discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges <i>from</i> the MS4 discussed.</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p>
2	3	III.A.3.b	<p>This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.</p>

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
			We'd suggest that Table "X" be revised to include specific sections in Part V or VI.D that may modify the exempt determination. We'd respectfully request that, based on the Executive Officer's determination of a problem, a reopener clause is added so the Permit may be amended to account for changes exempt/conditionally exempt status.
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

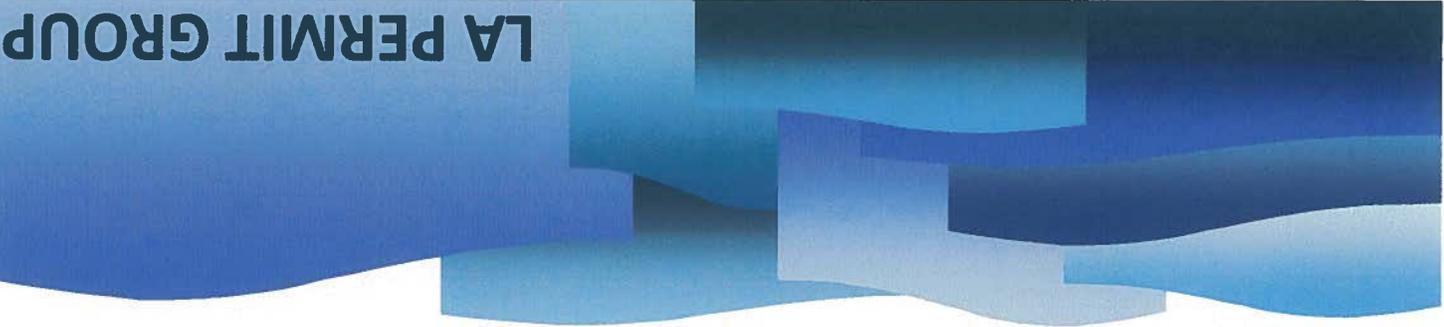
No.	Page	Citation	Comment
			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
15	Table X	General	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDS category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period



July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

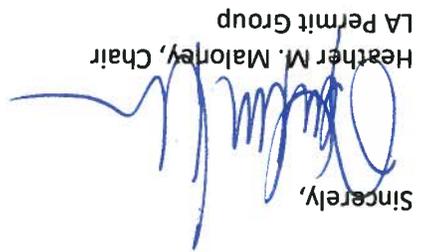
- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

- cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfeld, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit



June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal’s decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court’s opinion addressed two key issues for California’s MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

Agency/Reviewer: LA Permit Group

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment	
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?	
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included	
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included	
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.	

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards .</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofitting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Document Name: **Watershed Management Program Section Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Document Name: **Attachment E - Monitoring and Reporting Program Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s).”</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year...”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls in the inventory within 5 years...”

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.



CITY OF LA VERNE CITY HALL

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July 23, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

The City of La Verne appreciates the opportunity to provide comments on the subject draft order for the Los Angeles region. The City incorporates by reference the comment letter submitted by the Los Angeles Permit Group "Comment Letter – Draft NPDES Permit (Draft Order) for MS4 Discharges within the Los Angeles County Flood Control District" to this letter. While the City has been participating collaboratively and regionally and supports those efforts, the City feels it is important to send its own letter noting concerns with the pending 4th generation NPDES permit. Comments are organized around the following issues:

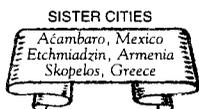
- Time Allowed for Review
- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

TIME ALLOWED FOR REVIEW

As stated in our letter dated July 12, 2012, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the draft order was developed. This justification is misplaced for several reasons:

- 1) Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years.
- 2) Although the LA Permit Group provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided;

Page 1



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Parks & Community Services 909/596-8700
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

- 3) By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft order was issued did we see the interaction (or lack of interaction) of the provisions;
- 4) Most importantly, stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft order. The time to properly evaluate the permit or assess its financial, legal, and personnel impacts cannot be accomplished in the 45 day review period.

It is imperative that municipalities be given additional time to review the permit and develop alternatives for the substantial issues found in this draft order. At minimum, this should be accomplished by an additional review of a tentative order before an adoption hearing is held. Additionally, the City has representatives that are planning on attending the League of California Cities Conference on September 5-7, 2012. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and staff of the permitted agencies to attend the hearing.

Recommendation: Provide an additional 180 business days for comments and reissue the Draft Order for 45 days prior to adoption to allow cities appropriate and adequate time for review and preparation.

RECEIVING WATER LIMITATIONS

The Receiving Water Limitations (RWL) language in the draft order creates liability that is unnecessary and counterproductive. The City is most concerned with being fined by the Regional Board or sued by a 3rd party even if it is doing everything reasonably within its power to comply with the permit. The City specifically supports recently proposed CASQA language that should be included under the RWL section of the permit allowing a true iterative process to improving stormwater quality.

Under the current RWL working proposal, the City will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal, the City must address these exceedances with the same priority as the TMDL pollutants. This is unreasonable and an ineffective use of limited municipal resources.

Recommendation: Develop Receiving Water Limitation language consistent with the California Stormwater Quality Association language that was submitted in a comment letter on the Caltrans permit and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

TOTAL MAXIMUM DAILY LOADS

The manner in which TMDLs are being entered into the permit does not allow the City of La Verne or other municipalities the appropriate steps or proper science to be in compliance with TMDLs.

Recommendation

- Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.

Whenever the reconsideration has been completed, the permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.

- Translate WLAs into WQBELs, expressed as BMPs
- State that the implementation of the BMPs using an iterative process will place the permittee into compliance with the MS4 Permit.
- Provide for four (4) compliance options for both interim and final WLAs:
 - Implement Actions/BMPs consistent with Watershed Management Program
 - Compliance at the outfall (end of pipe)
 - Compliance in the receiving water (river, creek, ocean)
 - No direct discharges
- Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.

MONITORING

The proposed monitoring program will significantly increase from current monitoring efforts. Although we understand the need for monitoring to support the permit, there are a number of issues that need to be fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” the MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 403(p).
- Regarding regional studies (MRP XI.A – B), these studies should be conducted by the Regional or State Board. But if the permit does require special studies, **the permit needs to establish the mechanism/option for permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether if toxicity is an issue in the receiving water before conducting expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. Finally, if a study is necessary, the Regional Board should lead the study.
- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the draft order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is

3 months and at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

MINIMUM CONTROL MEASURES

In order to further water quality improvements, the permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors. This constraint, as well as the USEPA position that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs.

Timeline

The City of La Verne requests that the Regional Board provide a draft timeline for implementation and phasing-in of the Minimum Control Measure requirements. The permit should allow a 12 month time schedule to transition from current efforts to the new MCM requirements.

Shifting of State Responsibility to the MS4

The draft order shifts much of the State responsibilities regarding the State's General Permits for Construction and Industrial Activities to cities. This is especially true for the Construction General Permit and Provision VI.D.7. A few examples of where the draft order either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Requiring the quantification of soil loss is redundant with the CGP and adds additional MS4 costs.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

New Development MCM

We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity
- Hydromodification

Storm Design Criteria

The draft order in Provision D.6.c.i (page 70) requires the developer retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all permits to date in California these two design criteria were judged to be equivalent. In fact, the current stormwater permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent

design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria.

Alternative Compliance Option - Offsite Mitigation

The draft order goes into great detail discussing an alternative compliance option to full on-site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site by way of the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.

Treatment Control Performance Benchmarks

The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks. Unfortunately, traditional post construction BMPs are not capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the draft order provision VI.D.6.d the permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration, the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures, which if planned and designed correctly, will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore, most of the LID measures will be infiltration type measures, which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept, when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is unreasonable and cost prohibitive for the municipality. We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.

BMP Specificity

The draft order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The City believes that such specificity although well intended is counterproductive. Such specificity is equivalent to a wastewater NPDES permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. We recommend that Attachment H be removed and a provision be established that requires the MS4 to develop the design specifications for bioretention/biofiltration.

Hydromodification

It is premature to change the hydromodification criteria, and specifically the interim criteria. In our current 2001 order Permittees are required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. We believe it is more constructive to keep with the criteria and not revise it for the interim until the final criteria can be developed by the State. A change now and then later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 permit is sufficient until such time final criteria are developed.

PUBLIC AGENCY MCM

The draft order identifies a number of requirements for public agency MCMs but two are specifically alarming. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. Even if the Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and the City would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Reading this provision in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. We recommend that for this permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.

ID/IC MCM

The draft order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

We recommend that the permit allow the Watershed Management Programs to guide the customization of the Numeric Action Levels (NAL) based on the highest water quality priorities in each watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall.

WATERSHED MANAGEMENT PROGRAMS

The draft order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. It will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable.

The following comments address the watershed management program:

- The draft order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control and not responsible for managing or abating those sources.
- The permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.
- The permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current draft order results in a significant annual effort and there is no correlation to the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to cities. Reporting can be streamlined and the jurisdictional and watershed reporting should be combined. Furthermore, the adaptive management process should be applied every two years instead of the every year frequency noted in the draft order.
- It is unclear how the current implementation of the stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, significant efforts in existing programs and implementation plans should be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.
- The timing of revising the Watershed Management Programs is conflicting and confusing. There should only be one revision to the Watershed Management Program, and only when the adaptive management/iterative process demonstrates that modification is warranted.
- The adaptive management/iterative approach and timing should be consistent between individual permittees ("jurisdictional watershed management program") and the watershed management program.

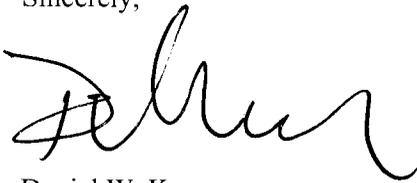
COST/ECONOMIC IMPLICATIONS

Regarding fiscal resources, the City of La Verne would like the parameters in which municipalities operate recognized. The draft order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, cities have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote; so, this is an item that is not under direct control of the municipalities – the Permit language should reflect this. Furthermore in addition to clean water, local resources are also directed to a number of health, safety, and quality of life factors. Thus, all these factors need to be developed in balance with each other. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory, and quality of life factors that local agencies are responsible for.

The economic implications of the many proposed permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. With these types of economic implications, it is critical that this Regional Board and their staff more carefully complete a fiscal analysis of what it will cost cities to be in compliance with the draft order. Finally, many of the requirements included in this permit such as complying with monitoring, TMDLs, RWLs, MCMs, construction/development requirements appear to contain several unfunded mandates. This is also a concern for the City if we are forced to implement these sections of the permit.

In closing, we thank you for the opportunity to comment and the City respectfully requests that the Board provide a second draft Tentative Order with an additional review period to allow permittees to have at least a total of 180 days to discuss and review the full document. It is important to review the entire draft permit to better understand the relationship among the various provisions. We strongly encourage you to make the adjustments requested. Please feel free to contact me at (909) 596-8710 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keesey', written in a cursive style.

Daniel W. Keesey
Director of Public Works



July 19, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Lawndale (City) is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. Additionally, to reiterate the comments offered on p.17, Costs/Economic Implications, the potential impacts upon smaller cities would have deleterious effects upon any hints of recovery. With the current economic situation, most cities are struggling to provide the basic infrastructure services and reduced these services, performed staff reductions and delayed planned improvements in order to still provide these basic services. To introduce a permit in a manner that has not been fully and completely thought out as to the effects and be hastily implemented, would most likely cause "knee-jerk" reactions by most agencies and further draw upon already reduced funding and resources just to be in compliance. We respectfully request that you carefully consider the comments offered and the timing of the permit implementation.

The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's letter also comments on additional issues that may not be addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to contact me.

Sincerely,

Glen W.C. Kau, P.E.
Interim Public Works Director

Encls

City of Lawndale

COMMENTS

Regarding the Los Angeles MS4 Tentative Order No. R4-2012-XXXX -
NPDES PERMIT NO. CAS004001 (issue date unspecified)

1. Numeric WQBELS
2. Receiving Water Limitation (RWL)
3. Iterative Process
4. Non-Storm Water Prohibition
5. Receiving Water Monitoring
6. Storm Water Outfall Based Monitoring
7. Non-Storm Water Outfall Based Monitoring
8. New Development/Re-development Effectiveness Monitoring

1. Numeric WQBELS

Numeric Water Quality Based Effluent Limitations (WQBELS) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELS as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELS, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELS may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. **Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred. This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.***

The Regional Board’s setting of WQBELS – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELS in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELS. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELS and explain how the state’s anti-degradation policy was applied as part of the

process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.**

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

*Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.*³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).**

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. Receiving Water Limitation

The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.

- a. **Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.***

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited.

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater*

management plan) and other requirements of the permit's limitations. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. **Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs.** Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards: they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. Iterative Process

The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. **Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California.** The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This

resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.⁶*

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXX, page

4. Non-Storm Water Prohibition

The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. **Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4.** This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-stormwater discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not, as the tentative order’s fact sheet asserts, include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”*⁸ There is no mention of watercourses.

The tentative order’s fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to “effectively prohibit” non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. Receiving Water Monitoring (Attachment “E”)

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes "b" and "c" no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

6. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee's discharge relative to municipal action levels, as described in Attachment G of this Order,*

- b. *Determine whether a Permittee's discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as "a" is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority*

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should be not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

- a) The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

- b) The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.***

Regarding purpose “b” it should also be noted that the Regional Board’s setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state’s anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.⁹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council’s *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

⁹United States Environmental Protection Agency, NPDES Permit Writers’ Manual, September, 2010, page 6-30.

Recommended Correction: Eliminate this requirement.

c.) Regarding purpose “c”, the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

7. Non-Storm Water Outfall Based Monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee’s discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee’s discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee’s discharge contributes to or causes an exceedance of receiving water limitations,*
- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

8. New Development/Re-development Effectiveness Monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a

task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

CITY OF LOS ANGELES

CALIFORNIA



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July 23, 2012

Mr. Samuel Unger
Executive Officer
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 210
Los Angeles, CA 90013

Attention: Renee Purdy, Regional Programs Section Chief
Ivar Ridgeway, Stormwater Permitting Chief

Dear Mr. Unger:

TECHNICAL COMMENTS ON TENTATIVE ORDER NO. R4-2012-XXXX AND NPDES PERMIT NO. CAS004001 - WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, INCLUDING THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The City of Los Angeles (City) Bureau of Sanitation (Bureau) appreciates the opportunity to provide technical comments on the Los Angeles Regional Water Quality Control Board (Regional Board) Tentative Order No. R4-2012-xxxx and NPDES Permit NO. CAS004001 - Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Los Angeles County Flood Control District, Including the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach (Tentative Order). The Bureau appreciates the time your staff has dedicated to meeting with us and the process that has provided the opportunity for substantial engagement and input.

The City of Los Angeles is committed to continuing to implement TMDLs and MS4 Permit provisions and proactive efforts to improve water quality as demonstrated by programs currently being implemented:

- On November 2, 2004, the voters of Los Angeles overwhelmingly passed Proposition O, which authorized the City of Los Angeles to issue a series of general obligation bonds for up to \$500 million for projects to protect public health by cleaning up pollution, including bacteria and trash, in the City's watercourses, beaches and the ocean, in order to meet Federal Clean Water Act requirements. In addition, the measure is funding improvements to protect water quality, provide flood protection, and increase water conservation, habitat protection, and open space. The bonds allow the City to purchase property and/or improve municipal properties for projects that:
 - Protect rivers, lakes, beaches, and the ocean;
 - Conserve and protect drinking water and other waters sources;
 - Reduce flooding and use neighborhood parks to decrease polluted runoff; and



- Capture, clean up, and reuse stormwater.

Through Proposition O, the City of Los Angeles is implementing key water quality projects, such as the rehabilitation of Echo Park Lake and Machado Lake, upgrading and building low flow diversions in the Santa Monica Bay watershed, and utilizing LID principles such as permeable pavement and bioretention cells to retrofit the Los Angeles Zoo parking lot.

- In 2010, the City of Los Angeles developed and implemented Green Street Standard Plans. The Green Street Standard Plans are City approved construction details for Green Street elements that incorporate stormwater best management practices (BMPs) into the pre-approved designs. Use of the Green Street Standard Plans improves water quality and increases water use efficiency by diverting street runoff into planter areas to cleanse stormwater and urban runoff, provide irrigation for landscaping, and recharge groundwater.
- In 2011, the Los Angeles City Council unanimously passed a landmark Low Impact Development Ordinance (LID), effective in May 2012. Developed by the Bureau of Sanitation in collaboration with community members, environmental organizations, business groups and the building industry, the LID ordinance calls for development and redevelopment projects to mitigate runoff in a manner that captures rainwater at its source, while utilizing natural resources including rain barrels, permeable pavement, rainwater storage tanks, infiltration swales or curb bumpouts to contain water.

The Bureau is providing technical comments on the Tentative Order and looks forward to discussing the comments with Regional Board staff. Given the complex nature of the comments, key technical issues are identified below while detailed discussions of the key technical issues are provided in Attachment A. Additional and supporting technical comments are provided in Attachments B and C.

Watershed Management Programs

- The Watershed Management Programs are a Welcomed, Necessary and Important Shift in the Implementation of Stormwater Programs in the Los Angeles Region
- More Time is Needed for the Development of the Watershed Management Programs
- Several Provisions of the Order must be Modified so as not to Negate the very Intent and Purpose of the Watershed Management Programs to Focus Resources on the Highest Priorities Within Each Watershed
- This Includes Modifications of the Receiving Water Limitations Language to Help the Permittees Focus on Established Watershed Priorities and make this section consistent with TMDL provisions
- An Additional Provision is Needed that Provides for the Development of an Integrated Plan, Consistent with Recent EPA Guidance on the Integration of Wastewater and Stormwater Requirements

TMDLs

- There are Multiple and Substantive Discrepancies Between the Specific Permit Provisions and State Adopted and EPA Promulgated TMDLs
- Where TMDL WLAs are Based Upon Receiving Waters, Effluent Limitations Should not be Established
- If Water Quality Objectives are met in the Receiving Water, Permittees Should be in Compliance with the Associated TMDL Provisions

Monitoring and Reporting Program

- The MRP should Allow Permittees to Focus Monitoring Efforts on Watershed Priorities
- Modifications are Needed to the Toxicity Testing Requirements

Discharge Prohibitions

- The Requirement to Prohibit, in lieu of "Effectively Prohibit," Non-Storm Water Discharges is Inconsistent with the Clean Water Act and Associated Federal Regulations

Non-Stormwater Action Levels

- Throughout the Permit, Revisions are Necessary in order to Clarify that Non-Storm water Action Levels are not Effluent Limitations
- The Approach to Establishing and Utilizing Non-Storm Water Action Levels Needs to be Revised

Minimum Control Measures

- Revisions are Needed in the Planning and Land Development Provisions Pertaining to the City's LID Ordinance and the Definition of Biofiltration
- Streamlining of the Facilities under State Purview is Needed

In addition to the key issues above, the impact of the regional funding should be considered. In July of 2013, the results of the countywide Water Quality Initiative Founding will be available. At that time, we suggest to cooperatively evaluate the impact of these results to reprioritize the provisions of this Permit. A possible mechanism is to include a re-opener clause in the permit to occur at that time as described in Attachment C.

Thank you for considering our technical comments on the Tentative Order. The City of Los Angeles is committed to continuing to work with other Permittees, the environmental community, and you and your staff in our shared mission to protect and improve water quality. If there are any questions, please contact me at (213) 485-0587.

Sincerely,


SHAHRAM KHARAGHANI, Ph.D., P.E., BCEE
Bureau of Sanitation

SK:ll
WPDCR8967

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List of Attachments:

Attachment A: Detailed Discussion of Key Technical Issues
Attachment B: Detailed Technical Comment Matrix
Attachment C: Suggested Provision to Provide for the Development of an Integrated Plan

ATTACHMENT A
DETAILED DISCUSSION OF KEY TECHNICAL ISSUES

WATERSHED MANAGEMENT PROGRAMS

1. The Watershed Management Programs are a Welcomed, Necessary and Important Shift in the Implementation of Stormwater Programs in the Los Angeles Region

The Bureau supports the Watershed Management Program approach in the Tentative Order, with modifications as discussed below. A watershed-based program is the ideal approach for the implementation of stormwater programs in the Los Angeles Region as it allows for the integration of all program elements, focuses efforts on the highest priorities for each watershed through the customization of actions and strategies, and affords agencies the opportunity to comply with requirements. This approach also supports the current efforts undertaken by agencies to obtain grant funding for water quality projects, as many grant criteria are based on coordinated watershed management efforts. Finally, this approach supports implementation of TMDLs, which are developed and implemented at the watershed scale.

2. More Time is Needed for the Development of the Watershed Management Programs

The Watershed Management Programs are a welcomed and necessary shift in the management of stormwater. However, the development of the Watershed Management Programs will be a complex process, especially as Permittees will need to engage not just with each other but also with the Regional Board and also likely provide for public participation. In addition, many Permittees may need to receive official approval by their respective councils or boards prior to submitting a plan that commits the Permittees to a substantial investment of public resources. That approval process itself will take many months to complete.

Therefore, as this very important paradigm shift occurs, the Bureau requests that the time period to submit the draft Watershed Management Programs increases from 12 months to 18 months. Such a time period is consistent with the time typically provided by the Regional Board for development of individual TMDL implementation plans.

Given the number of Watershed Management Programs that must be developed by Permittees that are in multiple watersheds, such as the Bureau, the additional time would provide a substantial benefit without substantively delaying the implementation of the final Watershed Management Programs.

During the 18 months that the Watershed Management Programs are under development, the Bureau will continue to implement its stormwater program that already includes many activities consistent with the requirements of the Tentative Order, including implementation of previously approved TMDL implementation plans, implementation and enforcement of the Low Impact Development (LID) ordinance, and green streets standards.

Request: *The following revisions are requested:*

- *Revise Part VI.C.2.b as follows:*

Permittees that elect to develop a Watershed Management Program must notify the Regional Water Board no later than six months after the effective date of this Order. Such notification shall specify if the Permittee(s) are requesting a 12 month or 18 month submittal date for the draft Watershed Management Program, per Part VI.C.2.c.i – iii. Within 60 days of the receipt of the notification, the Regional Board Executive Officer shall notify the Permittee(s) of the required submittal date for the Watershed Management Program.

- Revise Part VI.C.2.c. as follows:

Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board Executive Officer ~~no later than 1 year after the effective date of this Order~~ **as follows:**

i. **For Permittees that elect to collaborate on the development of a Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met in 50% of the land area in the watershed:**

(1) **Commence development of a Low Impact Development (LID) ordinance within 60 days of the effective date of the Order.**

(2) **Commence development of a policy that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order.**

(3) **Demonstrate in the notification of the intent to develop a Watershed Management Program that Part VI.C.2.b.i(1) and (2) have been met in 50% of the watershed area.**

ii. **For Permittees that elect to develop an individual Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met:**

(1) **Commence development of a Low Impact Development (LID) ordinance within 60 days of the effective date of the Order.**

(2) **Commence development of a policy that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order.**

(3) **Demonstrate in the notification of the intent to develop a Watershed Management Program that Part VI.C.2.b.ii(1) and (2) have been met.**

iii. **For Permittees that elect not to implement the conditions under Part VI.C.2.c.i or Part VI.C.2.c.ii, Permittees shall submit the draft Watershed Management Program no later than 12 months after the effective date of this Order.**

- Revise Table 9 (page 46) as follows:

Part	Provision	Due Date
VI.C.2.b	Notify Regional Water Board of intent to develop Watershed Management Program <u>and request submittal date for draft Watershed Management Program</u>	6 months after Order effective date
VI.C.2.c b	<u>For Permittee(s) that elect not to implement the conditions of Part VI.C.2.c.i or Part VI.C.2.c.ii, submit draft plan to Regional Water Board Executive Officer</u>	<u>12 months</u> 1 year after Order effective date
<u>VI.C.2.c</u>	<u>For Permittee(s) that meet requirements of Part VI.C.2.c.i or Part VI.C.2.c.ii, submit draft plan to Regional Water Board Executive Officer</u>	<u>18 months after Order effective date</u>

3. Several Provisions of the Order must be Modified so as not to Negate the very Intent and Purpose of the Watershed Management Programs to Focus Resources on the Highest Priorities Within Each Watershed.

Currently, the Watershed Management Program Provisions (Part VI.C) mostly focus on the integration and sequencing of the minimum control measures and TMDLs as the basis for the Watershed Management Programs. However, there are other key provisions of the Order that must also be integrated into Section VI.C in order not to negate the very intent and purpose of the Watershed Management Programs – focusing resources on the highest priorities within each watershed, including:

- **Part III.A: Non-Stormwater Action Levels.** In the Discharge Prohibition provisions, Part III.A.4.c. requires Permittees to take action when data, for even one sample, exceed the non-stormwater action levels identified in Attachment G. In the Watershed Management Program provisions, Part VI.C.3.b.iv.(2) addresses non-stormwater discharges, but the provision does not specifically limit the requirements to watershed priorities. As many of the constituents for which non-stormwater action levels have been established would not be identified as a priority for the watershed as there is no impairment in the receiving water, per the State's Listing Policy, requiring Permittees to take action for non-priority issues would negate the concept of prioritization and sequencing of actions via the Watershed Management Programs.

For example, in the Los Angeles River watershed, non-stormwater action levels have been established for chloride, sulfate, TDS, and aluminum, yet none of these pollutants are on the 303(d) list for the Los Angeles River. The non-stormwater action levels have been established at or below water quality standards. The practical outcome would be that Permittees would be obligated to address even single sample exceedances from an outfall for any of the pollutants with assigned non-storm water action levels, in direct conflict with the prioritization processes in Part VI.C.3.a, which is the foundational concept of the Watershed Management Programs. Without the ability to prioritize and sequence actions, the Watershed Management Programs are negated.

- **Part V.A: Receiving Water Limitations.** While the Watershed Management Program provisions do provide for the fulfillment of the requirements for Part V.A.3.a and Part V.A.4, it is limited only to watershed priorities. Without a commensurate change in Part V.A., Permittees will still be obligated to develop and implement an Integrated Monitoring and Compliance Report for non-watershed priorities (e.g., pollutants that are not impairing the receiving water). Similar to the non-stormwater action levels, this results in negating the prioritization and sequencing of actions that are fundamental to the Watershed Management Programs.
- **Attachment E: Monitoring and Reporting Program (MRP).** As currently written, there does not appear sufficient flexibility to modify monitoring requirements to support the Watershed Management Programs. This is of particular concern for the outfall monitoring requirements, which, as currently written, will require a significant level of resources without clear benefit to addressing receiving water issues. The MRP should allow for modification of monitoring requirements to focus efforts on watershed priorities identified in the Watershed Management Programs to ensure the effective and efficient use of resources. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. The current MRP requirements, specifically the outfall monitoring requirements, will divert resources and attention from watershed priorities, which are focused on receiving water issues.
- **Attachment G: Municipal Action Levels (MALs).** Attachment G is the only location in the Order where the concept of MALs are utilized or referenced. Therefore, it is unclear how the MALs fit into the requirements of the Order, especially within the Watershed Management

Programs in Part VI.C. Attachment G notes that where MALs are exceeded, each Permittee shall submit a MAL Action Plan with the Annual Report. The requirement to submit an additional report that requires an assessment of sources and identification of BMPs would be redundant for Permittees that are developing and implementing a Watershed Management Program. In addition, the discussion in Attachment G related to MALs does not provide a nexus to receiving waters. Consistent with the comments provided above for the non-storm water action levels, there should be a nexus between exceedances in the receiving water and exceedances of MALs so as not to negate the prioritization aspect of the Watershed Management Programs. Otherwise, Permittees may be required to address pollutants that do not meet the priority requirements outlined in Part VI.C for the Watershed Management Programs.

Request: To clearly and fully integrate the other provisions of the Order with the intent of the Watershed Management Programs to focus on watershed priorities, the following changes are requested:

- ***Watershed Management Programs***

- *Modify Part VI.C.1.b as follows:*

Participation in a Watershed Management Program is voluntary and allows a Permittee to ~~customize the requirements in Part VI.D (Minimum Control Measures) address the highest watershed priorities, including achieving compliance with the requirements of Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R~~ by customizing the control measures and the requirements of the provisions specified in Part VI.C.1.b.i-viii. Implementation of an approved Watershed Management Program fulfills the requirements of and constitutes compliance with these provisions. A Permittee shall not be considered in violation of the following provisions of this Order as long as the Permittee is implementing an approved Watershed Management Program:

- i. Part III.A (Prohibitions – Non-Storm Water Discharges)*
- ii. Part V.A (Receiving Water Limitations)*
- iii. Part VI.B (Monitoring and Reporting Program Requirements)*
- iv. Part VI.D (Minimum Control Measures)*
- v. Part VI.E (Total Maximum Daily Loads)*
- vi. Attachment E (Monitoring and Reporting Program)*
- vii. Attachment G (Non-Storm Water Action Levels and Municipal Action Levels)*
- viii. Attachments L through R (TMDL Provisions)*

- ***Non-storm water action levels***

- *Modify the language in Part VI.C.3.b.iv(2) as follows:*

For pollutants identified as a watershed priority and where Permittees identify non-storm water discharges from the MS4 as causing exceedances in the receiving water ~~as a source of pollutants in the source assessment,~~ the Watershed Control Measures shall include...

- *Consistent with the language already used in the Tentative Order linking the Watershed Management Programs to the Receiving Water Limitations provisions, add the following language to the end of Part VI.C.3.b.iv(2):*

Actions taken by Permittees as part of the Watershed Management Program to address non-stormwater discharges fulfill the requirements under Part III.A.4.c and Part III.A.4.d.

- Modify the language in Part III.A.4.c. as follows:

For Permittees implementing an approved Watershed Management Program, compliance with this Part III.A.4.c shall be achieved as outlined in Part VI.C.3.b.iv(2). Implementation of an approved Watershed Management Program, including Part VI.C.3.b.iv(2), fulfills the requirements of Part III.A.4.c.

- Modify the language in Part III.A.4.d. as follows:

For Permittees implementing an approved Watershed Management Program, compliance with this Part III.A.4.d shall be achieved as outlined in Part VI.C.3.b.iv(2). Implementation of an approved Watershed Management Program, including Part VI.C.3.b.iv(2), fulfills the requirements of Part III.A.4.d.

- **Receiving Water Limitations**

- Modify Part V.A.4 as follow:

A Permittee shall not be considered in violation of Part V.A. of this Order so long as the Permittee has complied with the procedures set forth in Part V.A.3. above and is implementing the revised storm water management program and its components, **and** the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board to modify current BMPs or develop additional BMPs.

- Add the following language to Part VI.C.3.c.iii.(3)(d):

The milestones and implementation schedule in (a)-(c) fulfill the requirements in Part V.A.3.a to prepare an Integrated Monitoring Compliance Report. A Permittee shall not be considered in violation of Part V.A. of this Order if the Permittee is in compliance with the applicable requirements of Part VI.C.

- **Monitoring Program**

- Add the following language regarding flexibility, consistent with the language and approach used for the minimum control measures, to Part VI.B:

“Dischargers shall comply with the MRP and future revisions thereto, in Attachment E, or may in lieu of the requirements in Attachment E, implement a customized monitoring program as set forth in an approved Watershed Management Program per Part VI.C.”

- Add the following language to Part VI.C.5:

Permittees in each WMA shall develop an integrated monitoring program ~~and~~ ~~assessment program~~ as set forth in Part IV of the MRP (Attachment E), or in lieu of the requirements in Part IV of the MRP, implement a customized monitoring program as set forth in an approved Watershed Management Program as defined below. Each monitoring program shall ~~to~~ assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the highest water quality priorities for each WMA. **The**

customized monitoring program shall be submitted as part of the Watershed Management Program and will be subject to approval by the Executive Officer. The customized monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:

- Receiving Water Monitoring
- Stormwater Outfall Monitoring
- Non-Storm Water Outfall Monitoring
- New Development/Re-Development Effectiveness Tracking
- Regional Studies

- **Municipal Action Levels**

- Include the following language at the end of Attachment G:

“Implementation of an approved Watershed Management Program per Part VI.C of the Order fulfills all requirements related to the development and implementation of the MAL Action Plan. A Permittee that is implementing an approved Watershed Management Program per Part VI.C shall not be considered in violation of this Part VIII of Attachment G.”

4. An Additional Provision is Needed that Provides for the Development of an Integrated Plan, Consistent with Recent EPA Guidance on the Integration of Wastewater and Stormwater Requirements

In recent years, USEPA has begun to embrace integrated planning approaches to municipal wastewater and stormwater management. USEPA has committed to working with States and communities to implement and utilize integrated planning approaches to municipal wastewater and stormwater management in its October 27, 2011 memorandum “Achieving Water Quality Through Municipal Stormwater and Wastewater Plans”¹ and in its June 5, 2012 memorandum “Integrated Municipal Stormwater and Wastewater Planning Approach Framework.”

Integrated planning will assist municipalities on their critical paths to achieving the human health and water quality objectives of the Clean Water Act (CWA) by identifying efficiencies in implementing the sometimes overlapping and competing requirements that arise from distinct wastewater and stormwater programs, including how best to make capital investments. Integrated planning can also facilitate the use of sustainable and comprehensive solutions, including green infrastructure, that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes that enhance the vitality of communities. The integrated planning approach does not remove obligations to comply with the CWA, but rather recognizes the flexibilities in the CWA for the appropriate sequencing of work.

Per the June 5, 2012 Memorandum, USEPA states “We encourage all Regions to work with their States to identify appropriate opportunities for implementing the Integrated Planning approach.” The Watershed Management Programs that are provided for in Part VI.C of the Tentative Order are very similar in concept to the Integrated Planning Framework developed by USEPA and provide an appropriate opportunity for implementing the Integrated Planning approach. However, there are some key additional considerations, not currently provided for in the Watershed Management Programs, that would result from the development and implementation of an Integrated Plan.

The Bureau recognizes that the Watershed Management Programs alone are a paradigm shift in the management of stormwater. However, as this shift occurs, the Bureau requests that the Order also provide the opportunity for Permittees to take the evolution one step further via the development and

¹ The October 27, 2011 and June 5, 2012 memoranda are available at <http://cfpub.epa.gov/npdes/integratedplans.cfm>.

implementation of an Integrated Plan. As the Integrated Planning Framework is relatively new to the States, the Bureau is not proposing any delays in the reissuance of this Order. However, consistent with the approaches identified by USEPA to incorporating the Integrated Plans into NPDES Permits², the Bureau is requesting that a reopener provision is included in Part VI.C of the final Order.

***Request:** Include an additional provision that would provide for (a) the development of an Integrated Plan, consistent with USEPA's Integrated Planning Framework and (b) a reopener of the Order to incorporate the Integrated Plan(s). The Bureau has provided a proposed provision as well as a Finding to support the additional provision in Attachment C.*

TOTAL MAXIMUM DAILY LOAD (TMDLs)

1. There are Multiple and Substantive Discrepancies Between the Specific Permit Provisions and State Adopted and EPA Promulgated TMDLs

There are multiple and substantive discrepancies between the specific TMDL provisions and the TMDLs adopted by the State and promulgated by EPA. For example, the Los Angeles River Bacteria TMDL Basin Plan Amendment states (page 6):

MS4 dischargers can demonstrate compliance with the final dry weather WLAs by demonstrating that the final WLA are met instream or by demonstrating one of the following conditions at outfalls to the receiving waters:

1. Flow-weighted concentration of E. coli in MS4 discharges during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls;
2. Zero discharge during dry weather;
3. Demonstration of compliance as specified in the MS4 NPDES permit which may include the use of BMPs where the permit's administrative record supports that the BMPs are expected to be sufficient to implement the WLA in the TMDL, the use of calculated loading rates such that loading of E. coli to the segment is less than or equal to a calculated loading rates that would not cause or contribute to exceedances based on a loading capacity representative of conditions in the River at the time of compliance or other appropriate method.

The third and final method, which provides both BMP based and load based methods for demonstrating compliance, is not provided in the Order. The Order must be consistent with the WLAs as outlined in the Basin Plan Amendment and this method of compliance must therefore be incorporated into the Order. Additional discrepancies are identified and detailed in Attachment B.

***Request:** The Bureau requests that the Regional Board review and address issues with specific TMDLs as outlined in Attachment B to this letter.*

2. Where TMDL WLAs are Based Upon Receiving Waters, Effluent Limitations Should not be Established

Assigning effluent limitations where WLAs are based upon receiving waters is inconsistent with the relevant WLAs in various TMDLs and is an inappropriate method of ensuring that MS4 permittees

² See USEPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework at pg. 6: "All or part of an integrated plan can be incorporated into an NPDES permit as appropriate. Limitations and considerations for incorporating integrated plans into permits include: ...Reopener provisions in permits consistent with section 122.62(a) may better facilitate adaptive management approaches." The referenced framework is attached to USEPA's June 5, 2012 memorandum (see footnote 1 for a link to the document).

comply with water quality standards. Given that many of the TMDLs and the WLAs contained therein are expressed in terms of the receiving water and do not necessarily translate to effluent limitations, receiving water limitations are more appropriate under most circumstances. For example, the WLAs in the LA River Bacteria TMDL are expressed as allowable exceedance days, not as concentration based effluent limitations. Discharges from the MS4 that are greater than the proposed effluent limits could nonetheless result in receiving water concentrations lower than the numeric target and in conformity with the TMDL and WLAs. (See Comment Matrix for additional examples)

Thus, if the permit revision proceeds in this manner, the Regional Board will have established a system whereby a Permittee could be acting in conformity with a relevant TMDL by ensuring it meets all applicable receiving water limitations, yet still be in violation of an effluent limit established in its permit that was supposedly derived from and designed to achieve consistency with that TMDL. We do not believe such a result is intended, and can be addressed by not establishing effluent limits where the relevant WLAs have been expressed as a receiving water limit.

In addition, the fact that Permittees will be required to request TSOs also raises the issue of mandatory minimum penalties (MMPs). Pursuant to Water Code section 13385(h) and (i), MMPs are required for certain violations of effluent limitations. It is critical that the implementation of these WLAs in the permit be in the form of receiving water limitations, in order to avoid exposing the Permittees to MMPs for violations that cannot be prevented.

Request: *Ensure that limitations are consistent with the assumptions and requirements of the TMDLs and where appropriate incorporate receiving water limitations.*

3. If Water Quality Objectives are met in the Receiving Water, Permittees Should be in Compliance with the Associated TMDL Provisions

Provision VI.E.2 presents the compliance determination provisions that provide multiple mechanisms for demonstrating compliance, which is greatly appreciated. However, some clarification regarding the definition and intent of “receiving water limitation” as used in these provisions is requested. As currently written, Parts VI.E.2.d.2 and VI.E.2.e.2c identify one of several conditions that Permittee’s can use to demonstrate compliance as:

There are no exceedances of the applicable receiving water limitation for the specific pollutant(s) associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee’s outfall(s);

It is unclear if VI.E.2.d.2 and VI.E.2.e.2c (1) limit “receiving water limitations” to those identified in the TMDL provisions, or (2) include applicable water quality objectives per the definition of “receiving water limitations” identified in Attachment A.

As the ultimate end goal of the TMDL is protection of beneficial uses, attainment of water quality objectives/criteria protective of those uses should constitute compliance with the TMDL provisions. Therefore, please either (a) clarify that “receiving water limitations” is synonymous with the definition provided in Attachment A or (b) modify the language as suggested below.

Request: If the use of “receiving water limitation” in Parts VI.E.2.d.2 and VI.E.2.e.2c is limited to those identified in the TMDL provisions, modify the language as follows (additions in bold, underlined text):

*There are no exceedances of the applicable receiving water limitation associated with a specific TMDL **or water quality objective for the specific pollutant(s)** in the receiving water(s) at, or downstream of, the Permittee’s outfall(s);*

MONITORING AND REPORTING PROGRAM

1. The MRP should Allow Permittees to Focus Monitoring Efforts on Watershed Priorities

The MRP identifies five Primary Objectives in the Purpose and Scope subsection (Attachment E.II.A pg E-3). The Bureau agrees that these objectives are appropriate and provide a solid foundation upon which to develop a monitoring program to evaluate MS4 impacts on receiving water as well as to inform management decisions that will improve water quality. However, the specific monitoring requirements contained in the remainder of the MRP will not provide the appropriate data to meet the Primary Objectives. The MRP should allow for modification of monitoring requirements to focus efforts on watershed priorities identified in the Watershed Management Programs (WMPs) to ensure the effective and efficient use of resources. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. The current MRP requirements, specifically the outfall monitoring requirements, will divert resources and attention from watershed priorities, which are focused on receiving water issues. The following provides several examples:

- The Regional Board adopted LA River Bacteria TMDL established a schedule that prioritizes MS4 implementation. As presented in the TMDL Staff Report (page 64), “Through extensive discussions involving a broad spectrum of stakeholders, four primary locations where water contact activities are known or likely to occur were categorized as the highest priority.” The TMDL schedule recognized the need to focus resources where public health risks were likely the greatest. Additionally, the TMDL recommends outfall monitoring on the same prioritized schedule to support implementation actions. As currently written, the dry weather outfall monitoring outlined in the MRP would require Permittees to monitor for bacteria at all outfalls in the LA River and tributaries within five years and take actions in contradiction to the prioritization dictated in the TMDL. The MS4 Permittee developed monitoring program for the LA River watershed should allow for recognition of the TMDL prioritization and the establishment of a consistent monitoring approach.
- The Regional Board adopted LA River Nutrients TMDL included ammonia WLAs for the three Water Reclamation Plants (WRP) in the watershed (City of LA Donald C. Tillman and LA/Glendale WRPs and the City of Burbank WRP) as well as for MS4 Permittees. Since the adoption of the TMDL, all three POTWs have upgraded their plants to remove ammonia and the Regional Board has adopted new ammonia criteria into the Basin Plan. Because of the WRP upgrades, ammonia criteria are consistently met instream as demonstrated by WRP data collected in Reaches 3, 4, and 5 of the LA River and the Burbank Western Channel and MS4 data collected in Reach 1. However, the current requirements in the MRP will require MS4 Permittees to collect outfall data for a constituent that is no longer impairing the LA River. Having MS4s in the LA River monitor for ammonia, as currently required, at all outfalls is not necessary since MS4 discharges are not causing an impairment as there is no impairment. The MS4 Permittee developed monitoring program for the LA River watershed should allow for recognition of the conditions and the receiving water.
- The wet weather outfall monitoring approach requires each individual MS4 Permittee to monitor at least one major outfall per HUC-12 subwatersheds within the Permittee’s jurisdiction. For the LA River watershed alone that would require between 20 and 108 wet weather sampling sites depending on the interpretation of the permit. However, the reality is that the data collected will have little value in providing the information MS4 Permittees need to focus BMPs (both structural and non-structural). The reasons being that 1) management actions must be targeted within a subwatershed (i.e., focus street sweeping on industrial areas), 2) the majority of structural BMPs for wet weather are distributed throughout a subwatershed in areas where they are expected to result in the most effective reduction of loading rather than at the end of an

outfall, and 3) MS4 Permittees have significantly more outfalls than can be monitored (the City of Los Angeles has more than 1,000 in the LA River watershed alone) and must rely on planning tools such as models of various complexity. The proposed individual outfall data will provide an aggregate description of loading, but will not inform Permittees as to the areas (i.e., land uses) that generate the largest loadings and provide direction for focused actions. The MS4 Permittee developed monitoring programs should allow for a modification to the approach to ensure appropriate data are collected to inform management decisions. These data could also be used to evaluate the extent to which MS4 discharges are affecting receiving water quality.

In summary, the Bureau agrees with the MRP Program Objectives, but believes the MRP should allow for modification of monitoring requirements to focus efforts on watershed priorities identified in the WMP. As currently written, there does not appear sufficient flexibility to modify monitoring requirements. This is of particular concern for the outfall monitoring requirements, which, will require a significant level of resources without clear benefit to addressing receiving water issues.

Request: Utilize the following revised language in Attachment E to allow for more efficient approaches to conducting monitoring to support developing and implementing effective management actions as well as to assess compliance.

- **Part II.C**

The Monitoring Program provides flexibility to allow Permittees to develop an integrated monitoring program to address all of the monitoring requirements of this Order and other monitoring obligations or requirements in a cost efficient and effective manner. In lieu of the requirements outlined in Part IV.A, Permittees may elect to submit a customized IMP as part of the Watershed Management Program as outlined in Part VI.C of the Order. The development and implementation of a customized IMP as part of a Watershed Management Program fulfills the requirements of this Monitoring and Reporting Program.

- **Part II.D**

The Monitoring Program provides flexibility to allow Permittees to coordinate monitoring efforts on a watershed or subwatershed basis to leverage monitoring resources in an effort to increase cost-efficiency and effectiveness and to closely align monitoring with TMDL monitoring requirements and Watershed Management Programs. In lieu of the requirements outlined in Part IV.B, Permittees may elect to submit a customized CIMP as part of the Watershed Management Program as outlined in Part VI.C of the Order. The development and implementation of a customized CIMP as part of a Watershed Management Program fulfills the requirements of this Monitoring and Reporting Program.

- **Part IV.A.4**

Where appropriate (~~e.g., dry weather outfall based screening program~~), the Integrated Monitoring Program may develop and utilize alternative approaches to meet the Primary Objectives (Part II.A) and address the five Monitoring Program elements (Part II.E). Sufficient justification shall be provided in the IMP for the alternative approach(es). ~~The alternative approach(es) must be screening level monitoring strategies to avoid more costly analytical procedures if approved by the Regional Water Board Executive Officer.~~

- **Part IV.B (add new bullet)**

Where appropriate, the Coordinated Integrated Monitoring Program may develop and utilize alternative approaches to meet the Primary Objectives (Part II.A) and address the

five Monitoring Program elements (Part II.E). Sufficient justification shall be provided in the CIMP for the alternative approach(es). The alternative approach(es) must be approved by the Regional Water Board Executive Officer.

2. Modifications are Needed to the Toxicity Testing Requirements

The standard EPA whole effluent toxicity (WET) test methods were developed for continuous point source wastewater discharges and do not take into account the unique features pertaining to stormwater and non-stormwater discharges. However, the MRP requirements for toxicity testing at outfalls are essentially the same as the wastewater plants in the region. The applicability of the WET method for use on intermittent MS4 discharges has never been properly validated. Indeed, the existing EPA WET methods (EPA 2002a-c and EPA 1995) were not designed to assess the extremely dynamic and transient nature of urban runoff. Stormwater discharges typically last a (highly variable) number of hours, while most toxicity tests last several days; the tests continue to expose organisms to stormwater for periods far exceeding the duration of actual exposure to stormwater in the real world. The net effect is to overestimate the toxic effects of stormwater.

The MRP requires stormwater Permittees to conduct both dry and wet weather outfall toxicity testing and Permittees are required to conduct accelerated monitoring if a test results in a “fail.” Storm events are episodic in nature and represent acute (not chronic) conditions, making the accelerated monitoring prescribed in the MRP not appropriate for storm event monitoring. The inapplicability of accelerated monitoring for storm events demonstrates the inherent difference between the regulation of stormwater and wastewater.

Additionally, individual outfalls often carry a minute percentage of the total volume in the receiving waters and as such toxicity observed in one outfall sample will likely have no effect on receiving water. The current approach is appropriate for wastewater discharges but not urban runoff and they should be treated differently.

Furthermore, it is inappropriate to place wastewater program elements such as the Toxicity Reduction Evaluation (TRE) in an MS4 permit. The MRP is focused on identifying individual constituents that are causing or contributing to receiving water impairments such that information is available to develop and implement control measures. Requiring Permittees to implement a TRE subverts the process by which they will identify and address water quality issues.

Lastly, the more appropriate approach for urban runoff is to identify whether toxicity exists in the receiving water, identify pollutants that are causing toxicity through toxicity identification evaluations (TIEs), and then incorporate monitoring of pollutants that are causing toxicity into the outfall monitoring.

Request: Remove the outfall toxicity testing and TRE requirements.

DISCHARGE PROHIBITIONS

1. The Requirement to Prohibit, in lieu of “Effectively Prohibit,” Non-Storm Water Discharges is Inconsistent with the Clean Water Act and Associated Federal Regulations

The Tentative Permit proposes to require that “Each Permittee shall, ..., prohibit non-storm water discharges through the MS4 to receiving waters ...” This requirement to prohibit non-storm water discharges is different from the previous permit and is inconsistent with controlling language in the Clean Water Act and associated federal regulations. Specifically, both the Clean Water Act and the previous permit require each permittee to “effectively prohibit non-storm water discharges” – not prohibit. (33 U.S.C.S., §1342(p)(3)(B)(ii); see also Order No. 01-182, as amended.) The difference between the term “effectively prohibit” and “prohibit” may be significant when being interpreted by a court of law in that without the modifying term “effectively,” a court might determine that the City and other Permittees are

legally required to prohibit all such discharges and any such non-storm water discharge that enters the storm drain system is a violation of the permit, regardless of the Permittees ordinance, programs to enforce the ordinance and other control programs. In other words, the requirement on the Permittee would extend beyond adopting and enforcing local ordinances, and other control programs, to keep such discharges from happening but would make the Permittee legally responsible and liable for any such prohibited non-storm water discharge entering the MS4 system. Such a position is untenable for the City, and is inconsistent with CWA legislative history, regulations and associated guidance.

The legislative history of the CWA suggests that congress intended a pragmatic and sensible approach to the “effectively prohibit” language. Section 1342(p) was added to the CWA in 1987.³ According to Congress, the purpose of the new provisions was to provide “an improved and less burdensome process for control of discharges of stormwater, particularly for municipalities.” (133 Cong. Rec. S733 (daily ed. Jan. 13, 1987).).”

Section 1342(p)(3)(B) can be read as requiring only that the permit contain a provision that “effectively prohibits” non-stormwater discharges to the MS4. In other words, this section could be interpreted as placing a requirement on the *language in the permit or local ordinances* such that there is no misunderstanding by those who use it that illicit discharges into the MS4 are prohibited.

“Subsection [(p)(3)(B)] requires that *permits* for municipal storm sewers *contains* [sic] a *requirement* to effectively prohibit non-storm-water discharges into storm sewers. Under this provision, *all such permits must assure* that such discharges are prohibited. [. . .] They must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable . . .” (Emphasis added.)

(133 Cong. Rec. H131 (daily ed. Jan. 7, 1987).)

Essentially, this interpretation construes (p)(3)(B)(ii) to require the prohibition and (p)(3)(B)(iii) to provide the mechanism for that prohibition. However, this language does not dictate that a holder of the permit fails to “effectively prohibit” illicit discharges every time such a discharge occurs. Rather, (p)(3)(B)(iii) provides the mechanism and the standard of care to be applied in “prohibiting” illicit discharges.

This interpretation is also consistent with Environmental Protection Agency (EPA) Permit Writing Guidelines (April 2010), which also take a realistic and practical approach in defining the expectations of permit holders. “In many circumstances, sources of intermittent, illicit discharges are very difficult to locate, and these cases may remain unresolved.” This guideline and the interpretation of (p)(3)(B)(ii)-(iii) above, when taken together, substantially narrow the meaning of “effectively prohibit” to apply only to the regulatory (e.g. ordinance drafting) aspect of the permit process. This is vastly different from an interpretation of (ii) as requiring a permit holder to in fact prohibit any and all illicit discharges into the MS4.

Further, the federal regulations provide that each permittee’s application shall consist of:

³ Section 1342(p)(3)(B) provides:

“(B) Municipal discharge. Permits for discharges from municipal storm sewers—

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” (33 U.S.C. §1342(p)(3)(B).)

- (i) Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:
- (B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;
- (C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;
- (E) Require compliance with conditions in ordinances, permits, contracts or orders; and (F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. (40 C.F.R. § 122.26(d)(2)(i).)

This is consistent with a reading of (p)(3)(B)(ii) as requiring only that the permit holder establish a clear regulatory scheme by ordinance or otherwise. In other words, the rule requires that the permit holder have adequate legal authority to prohibit through ordinance and control through ordinance illicit discharges to the MS4. The permit holder must also have sufficient legal authority to require compliance with the regulatory scheme and to carry out its inspection, surveillance, and monitoring procedures. The regulation does not seem to require the permit holder to prevent any and all discharges to the MS4. The Federal Register indicates that a permit holder “effectively prohibits” illicit discharges by creating a program to detect and control illicit discharges to the MS4. It specifically discusses implementation of “effective prohibition on non-stormwater discharges,” which requires a detailed SWMP and a listing of constituents they may or may not deem “illicit.” The following excerpts provide an overview of the relevant sections from the Federal Register:

[T]oday’s rule begins to implement the ‘effective prohibition’ by requiring municipal operators of municipal separate storm sewer systems serving a population of 100,000 or more to submit a description of a program to detect and control certain non-storm water discharges to their municipal system.” (55 Fed. Reg. 47,990 (Nov. 16, 1990).)

The phrase “begins to implement,” implies that achieving “effective prohibition” does not occur all at once, but rather, requires implementation of certain steps or processes. This implication is further supported by the excerpts below, which specifically outline the parameters of “effective prohibition.”

Today’s rule has two permit application requirements that are designed to begin implementation of the effective prohibition. The first requirement . . . addresses a screening analysis which is intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. The second provision . . . requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems. . . . In light of the language in the statute, permit conditions should do more than plan for controls during the term of the permit. A strong effort to have the necessary police powers and controls based on pollutant data should be undertaken before permits are issued. (Id.)

The extended excerpt above makes three major points. First, “effective prohibition” involves a series of steps and processes included in the SWMP. Second, a permit holder must do more than merely monitor the MS4 for illicit discharges; it must actively seek them out and utilize its police powers to enforce the provisions of the permit. Third, this combination of policies and procedures satisfies the statutory mandate of 1342(p)(3)(B).

In addition, the Federal Register sections discussing the requirements for small MS4s, also support the policies/procedures definition of “effectively prohibit”:

In today’s rule, any NPDES permit issued to an operator of a regulated small MS4 must, at a minimum, require the operator to develop, implement and enforce an illicit discharge detection and elimination program. Inclusion of this measure for regulated small MS4s is consistent with the ‘effective prohibition’ requirement for large and medium MS4s. (NPDES Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68,722. (Dec. 8, 1999), emphasis added.)

Finally, the EPA MS4 Permit Improvement Guide (Guide) also supports the interpretation of “effectively prohibit” as requiring the design and implementation of policies and procedures. Though this guide is designed primarily for small MS4s, its objectives apply to large MS4s as well. (EPA, 833-R-10-001, MS4 Permit Improvement Guide (2010).) Chapter Three of the Guide, “Illicit Discharge Detection and Elimination,” provides the requisite guidelines to permit writers in drafting provisions that satisfy the prohibitions against illicit discharges. Chapter three provides that both small and large MS4s:

. . . are required to address illicit discharges into the MS4 system. An illicit discharge is defined as any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater, except allowable discharges pursuant to an NPDES permit (40 CFR 122.26(b)(2)). In addition to requiring [a] permittee to have the legal authority to prohibit non-stormwater discharges from entering storm sewers (CWA Section 402(p)(3)(B)) (see Chapter I), MS4 permits must also require the development of a comprehensive, proactive Illicit Discharge Detection Elimination (IDDE) program.

An effective IDDE program is more than just a program to respond to complaints about illicit discharges or spills. Permittees must proactively seek out illicit discharges, or activities that could result in discharges, such as illegal connections to the storm sewer system, improper disposal of wastes, or dumping of used motor oil or other chemicals.” (Id. at 24.)

In sum, federal regulations and guidance support an interpretation of “effectively prohibit” as requiring a series of polices and procedures designed to detect, control, and remove illicit discharges to an MS4. None of these sources interpret “effectively prohibit” to require complete prevention of all non-stormwater discharges or to impose absolute liability upon a permit holder for all such discharges.

In *City of Abeline v. EPA*; *City of Irving v. EPA*, 324 F.3d 657 (5th Cir. 2003), the Fifth Circuit denied review of two cities’ Tenth Amendment “as applied” challenges to their MS4 stormwater permits and foreclosed their arguments regarding overextended liability for third party discharges. The cities had argued before the Environmental Appeals Board (EAB) that by refusing to authorize all discharges under the permit, EPA had transferred liability to the city, which forced the city to use its police powers to stop such discharges and is contrary to the scheme established by the storm water regulations, which places responsibility for controlling and obtaining legal authorization for storm water discharges on the discharger rather than the municipality. (2001 EPA App. LEXIS 10 (July 16, 2001). The court disagreed: “The Cities’ argument is foreclosed, however, by the conclusion of the [EAB] that, because the Cities’ permits expressly provide that liability for third-party discharges is not transferred to the permittee, the Cities’ are not liable for such discharges so long as they comply with their SWMP’s. (Id. at 18.)

Although the requirement to “effectively prohibit” non-stormwater discharges is not defined, a review of the legislative history, as well as the EPA regulations and decisions from case law, indicate that a permit holder “effectively prohibits” non-stormwater discharges from entering an MS4 by implementing a set of

policies and procedures to monitor, control and remove illicit discharges. The removal of the term “effectively prohibit” in the Tentative Permit, and replacing it with “prohibit” would imply that the Regional Board is looking to make this requirement more stringent than federal law, and would arguably make the City and all other permittees liable for any prohibited discharge into the their portion of the MS4, regardless of their control efforts to prohibit such non-stormwater discharges.

Request: *The Bureau requests that Part III.A.1 (and other relevant provisions where “prohibit” is currently used) is modified to require each Permittee to “effectively prohibit” non-storm water discharges – not prohibit non-storm water discharges.*

NON-STORM WATER ACTION LEVELS

1. Throughout the Permit, Revisions are Necessary in order to Clarify that Non-Storm water Action Levels are not Effluent Limitations

Currently, the non-stormwater action levels are used as requirements throughout the Tentative Order. However, the Tentative Order does not provide any context or discussion related to the intended use, basis, or rationale for the non-stormwater action levels outside of the Fact Sheet and that discussion is limited to the section related to monitoring (pgs. F-119 through F-125). As such, there are several modifications and additions that need to be included in the Order.

Request: *The Bureau requests the following modifications to the Tentative Order:*

- *Add a definition for non-storm water action level in Attachment A.*
- *Add explanatory text to Attachment G. Similar to the text provided for municipal action levels, a narrative is needed that fully describes the basis, intended use, and rationale for the for the non-stormwater action levels.*
- *Revise Standard Provision 14(f). The Bureau recommends that this subsection be revised to explicitly state that a non-stormwater action level is not an effluent limitation. Accordingly, the last sentence of Part.VI.A.14(f) should be revised as follows: “An effluent limitation, for these purposes, does not include a receiving water limitation, a compliance schedule, a best management practice, a municipal action level, or non-stormwater action level.”*
- *Add clarifying language to the Fact Sheet. On page F-119, the last sentence in the subsection titled “Approach for deriving Action Levels” should be modified as follows: “Action levels in this Order are based upon numeric or narrative water quality objectives and criteria as defined in the Basin Plan, the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), and the CTR; however, Action Levels are not considered to be water quality objectives or criteria, or water quality based effluent limitations. They are screening tools and trigger the need for certain implementation actions if exceeded. Exceedance of an Action Level does not constitute a violation of a water quality objective, criteria or receiving water limitation.”*

2. The Approach to Establishing and Utilizing Non-Storm Water Action Levels Needs to be Revised

Several issues have been identified with the current approach to establishing and utilizing the non-storm water action levels, including:

- **Non-storm water action levels have been established for pollutant-waterbody combinations with effective TMDLs.** Contrary to the statement on Page F-119 of the Fact Sheet that action levels have been established “where a TMDL has not been developed,” there are numerous instances in Attachment G where non-storm water action levels have in fact been established

where an effective TMDL is in place. For example, WQBELs have been established in the Tentative Order to implement TMDLs for the following pollutant-waterbody combinations, yet action levels have also been assigned:

- Los Angeles River Watershed: copper, bacteria, and nitrate nitrogen
- Ballona Creek: bacteria, copper, lead, selenium

It is inappropriate and confusing to establish non-storm water action levels where WQBELs have also been established to implement an effective TMDL. Permittees, including the Bureau, have invested considerable resources in developing implementation plans for these TMDLs. The introduction of non-storm water action levels are therefore inappropriate and unnecessary for those pollutant-waterbody combinations with established TMDLs.

- **The analysis that establishes the non-storm water action levels cannot be verified based upon the information presented in the Fact Sheet.** The Fact Sheet does not provide detailed calculations or information on how each of the non-storm water action levels were developed and provides only one example of such derivation (for nickel in discharges to salt water). As such, the Regional Board's calculations behind each non-storm water action level cannot be verified. Given that these non-storm water action levels may trigger significant actions by Permittees, it is imperative that Permittees can verify that each non-storm water action level is appropriate and validly established.
- **Action Levels Should be Established in Order to Isolate Problematic Outfalls.** As described on Page F-119 of the Fact Sheet, a Reasonable Potential Analysis (RPA) was conducted to calculate non-storm water action levels for CTR priority pollutants following Section 1.4 of the Policy for the Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). However, as noted on Page 3, footnote 1 of the SIP, the SIP does not apply to the regulation of stormwater discharges.

The result is that non-storm water action levels have been established that in certain instances, such as selenium, are below water quality objectives. Given that there is not a nexus between receiving water quality and outfall concentrations, establishing non-storm water action levels lower than water quality objectives may exacerbate the impact to Watershed Management Programs. Permittees would not only be required to address exceedances without any impairment to receiving waters, but Permittees would also be required to address pollutants for which exceedances have not yet occurred from of the MS4 in addition to lacking a connection to impairment in the receiving water.

Similar to the municipal action levels, the non-storm water action levels can be powerful in isolating problematic outfalls. However, by establishing the action level at or below the water quality objective, it is quite feasible that all discharges will likely exceed one of the action levels thus making it particularly difficult to prioritize action/outfalls. As part of the Watershed Management Programs, Permittees can utilize existing data and local knowledge to propose appropriate non-storm water action levels. As part of the Watershed Management Program, the action levels would be subject to Executive Officer approval.

- **Non-Storm Water Action Levels Should Focus on 303(d) Listings.** Page F-118 of the Fact Sheet states:

“Given the need for additional data on non-storm water discharges from the MS4 where a TMDL has not been developed, USEPA and the State have used action levels as a means to gauge potential impact to water quality and to identify the potential need for additional controls for non-storm water discharges in the future.”

Using the rationale stated in the Fact Sheet, the non-storm water action levels should be established only for pollutant-waterbody combinations on the 303(d) list where TMDLs have not yet been established. This approach would be consistent with the Watershed Management Programs and would provide appropriate additional rigor to the stormwater program without negating the concept of prioritization.

Request: *The Bureau requests the following for non-stormwater action levels:*

- *Delete all non-storm water action levels where an effective TMDL is in place*
- *The Regional Board should provide information (calculations and/or data and procedures) such that all action levels in the Tentative Order can be verified*
- *Where non-storm water action levels are warranted, provide for appropriate non-storm water action levels to be developed as part of the Watershed Management Program in order to ensure that problematic outfalls are isolated and addressed*
- *Revise the overall approach to non-storm water action levels such that action levels are only established for pollutant-waterbody combinations on the 303(d) list where TMDLs have not yet been established*

MINIMUM CONTROL MEASURES

1. Revisions are Needed in the Planning and Land Development Provisions Pertaining to the City's LID Ordinance and the Definition of Biofiltration

The City appreciates the addition of the Local Ordinance Equivalence language. The creation of the City's Low Impact Development (LID) Ordinance, which went into effect in May 2012, included extensive stakeholder input including Regional Board staff participation. In many ways, the City's LID ordinance goes beyond the requirements of the proposed land development requirements; including expanding the targeted categories and lowering the projects size thresholds. The City recommends the City's LID Ordinance be deemed equivalent.

Additional and more detailed comments on the Planning and Land Development Provision are provided in Attachment B. The Bureau supports allowing biofiltration as an alternative to infiltration and rainwater harvesting since it provides high pollutant removal efficiencies, is sustainable, and in many cases provides incidental infiltration. Biofiltration as an equivalent to infiltration is also desirable due to the dense nature of urban development in the City. The number of biofiltration design variations allows their use in a multitude of site and design constraints. The City wishes to maintain the maximum amount of flexibility possible when it comes to BMP selection so that creative and innovative opportunities can be explored that will result in cost-effective mechanisms for reducing multiple pollutants of concern. This is particularly important given the number of TMDLs that Permittees must address in the Los Angeles Region.

One major distinction between the proposed biofiltration provisions and the City's LID Ordinance is the proposed narrowed definition of biofiltration. The proposed biofiltration definition excludes planter boxes that prevent incidental infiltration. In our established practice in the City of Los Angeles, when infiltration is not feasible, planter boxes are used to provide high quality treatment as well as significant runoff reduction through evapotranspiration. However, in many of those cases, even incidental infiltration is a major cause of concern due to structural and geotechnical considerations. As a result, the City requires biofiltration systems to be lined in some cases to prevent any infiltration. The City views the use of lined planter boxes as an additional tool for onsite stormwater mitigation and as a reasonable approach for reducing stormwater pollution, while protecting public safety and property.

Request: The Bureau requests that Regional Board staff consider the City's LID Ordinance as an equivalent mechanism for compliance with the Planning and Land Development MCM provisions. The Bureau also requests to revise the definition of biofiltration to include planter boxes including those that do not allow for incidental infiltration.

2. Streamlining of the Facilities under State Purview is Needed

The Tentative Order expands the permittees responsibilities over facilities that are subject to State purview; primarily those covered under the Industrial General Permit (IGP) and Construction General Permit (CGP). With respect to IGP, many of these facilities are also required to be tracked and inspected as part of the proposed Industrial/Commercial Facilities Program. Reducing overlap with inspections conducted by the State and information tracked by SMARTS will allow the City to focus resources on areas that will maximize reduction of pollution loads from these facilities.

With respect to the CGP construction sites, the provisions listed under the Development Construction Program, significantly expand the permittees' oversight and inspection for construction sites with greater than one acre of disturbed soil. The City of Los Angeles building and grading inspectors, visit these sites during construction as well upon completion of the construction prior to issuance of the certificate of Occupancy of the development project. As part of these inspections, the City can propose a mechanism for referral to the State any problematic sites. However more detailed specialized inspection to determined compliance with the State's regulations would be best performed by State inspectors.

Request: The Bureau recommends that industrial facilities covered under the IGP and construction sites covered under the CGP be kept under State Purview. Instead of the added responsibilities for the permittees, the Bureau recommends a streamlined process for the permittees to refer noted problematic sites to the Regional Board.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
PART III: DISCHARGE PROHIBITIONS			
1	Tentative Order III.A.1 Pg. 42	The Requirement to prohibit, in lieu of “effectively prohibit,” non-stormwater discharges is inconsistent with the Clean Water Act and associated regulations	The Tentative Permit proposes to require that “Each Permittee shall, ..., prohibit non-storm water discharges through the MS4 to receiving waters” This requirement to prohibit non-storm water discharges is different from the previous permit and is inconsistent with controlling language in the Clean Water Act and associated federal regulations. Specifically, both the Clean Water Act and the previous permit require each permittee to “effectively prohibit non-storm water discharges” – not prohibit. (33 U.S.C.S., §1342(p)(3)(B)(ii); see also Order No. 01-182, as amended.) We requests that Part III.A.1 (and other relevant provisions where “prohibit” is currently used) is modified to require each Permittee to “effectively prohibit” non-storm water discharges – not prohibit non-storm water discharges. Please refer to the Attachment A for a more detailed discussion of this concern.
2	Tentative Order III.A.4.a.c III.A.4.a.d Pg. 30-31	Revisions are necessary so as not to negate the intent of the Watershed Management Programs	See comments provided in Attachment A.
3	Tentative Order III Table 8 Pg. 35	Overtly restrictive requirements for dechlorinated/ debrominated swimming pool/spa discharges” and for “dewatering of decorative fountains”.	The testing required for residential pools, spas, and decorative fountains prior to discharging is cumbersome and much too sophisticated for most property owners to conduct. In addition, in Los Angeles County alone, there are 16,000 public pools and an undetermined number of decorative fountains, which will be subject to this testing prior to discharge. The cost of testing kits or laboratory analysis will pose a huge burden on the homeowners, as well as recreation and parks departments within the City and County. Please consider deleting this condition. We agree with the requirement for volumetrically and velocity controlling these discharges but for a different reason namely that the storm drain system should be able to handle it. Regardless of the rate of discharge, there would not be a significant loss to evaporation or infiltration when discharging into the storm drain system.
4	Tentative Order III Table 8 Pg. 36	The allowable spray washing application rate of 0.006 gallons is unrealistic	The allowable spray washing application rate of 0.006 gallons is too low and we are not aware of any product that would meet this application rate. Please remove application rate for high pressure, low volume spray-washing. Even higher application rates may not result in wash water discharges reaching the storm drain system.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
PART V: RECEIVING WATER LIMITATIONS			
5	Tentative Order V.A.1 Pg. 39	The Receiving Water Limitations Provisions are Inconsistent with the Intent of the Watershed Management Program	See comments provided in Attachment A.
PART VI.A: STANDARD PROVISIONS			
6	Tentative Order, VI.A.2.i Pg. 39	Waterboards should be the lead regulators for industrial and construction sites with a general NPDES permit	The requirement to control discharges associated with industrial and construction activity including those that have coverage under a State NPDES exceeds past practices and conflicts with the provisions of these NPDES permits that give the authority to the State agencies to regulate them. In addition the State is collecting significant application and annual fees from these sites for the purpose of tracking and enforcing these permits. Finally at the May 3 rd Board Workshop on the MS4 Permit, Regional Board members specifically instructed the Regional Board staff to write the permit to maintain authority and responsibility for these sites. Subsequently on the July 9 th workshop, Regional Board staff viewed positively this overlapping. Since permittees have multiple challenges as part of this permit, the Bureau will like to request that, during the duration of this permit cycle, the Waterboards maintain responsibility for these sites.
7	Tentative Order, VI.A.2.viii Pg. 39	The permittees should not be held responsible for comingled discharges pending establishment of these interagency agreements.	Much of our MS4 system is receiving stormwater discharges from the highways owned by the State of California Department of Transportation (Caltrans). These discharges have typical concentrations above water quality standards and thus they will cause and contribute to the violation of receiving water limitations. The State Water Resources Control Board is currently processing an updated Caltrans Stormwater Permit. The permittees should not be held responsible for comingled discharges pending establishment of these interagency agreements.
8	Tentative Order, Part VI.A.3.a Pg. 40	The requirement to secure the necessary fiscal resources places compliance with this Permit over other municipal priorities	Requiring “each permittee to exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order” is beyond the scope of the MS4 and the Regional Board’s authority. The logical extension of this statement is that a permittee must place the funding for meeting MS4 requirements above any other requirements a permittee, especially a municipality, must meet. Please revise this statement to acknowledge that municipalities are required to meet competing regulatory, infrastructure, and social goals.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
9	Tentative Order, VI.A.4.a Pg. 40	Include requirement for Watershed Management coordination	Please include a provision for all permittees, even for those not participating in watershed-wide Watershed Management Plans, to coordinate and share information regarding their permit-compliance activities.
10	Tentative Order, VI.A.7.a Pg. 41	Allow Permit changes for error correction	Please include a provision to allow changes to this Order to correct errors made on developing the provisions of this Order or based on newly found evidence or technical research.
11	Tentative Order, VI.A.7.d.ii Pg. 42	Minor modifications provisions	40 CFR Section 122.63 includes additional provisions for allowing minor modifications other than the two listed. Also more frequent monitoring and reporting does not necessarily constitute a minor modification and unexpected expansion of existing monitoring efforts may be a major imposition on municipalities.
12	Tentative Order, VI.A.8 Pg. 42	Standard Provision 8 is More Appropriate for Direct Point Source Discharges such as a Publicly Owned Treatment Works (POTWs)	The Tentative Order includes a standard provision that is more appropriate as applied to direct point source discharges such as POTWs rather than stormwater from MS4 systems. Specifically, the Tentative Permit includes a standard provision that states, “Any discharge of waste to any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of this Order.” (Tentative Permit, p. 42.) The Tentative Order broadly discusses permit coverage in Findings D, however, this broad discussion does not clearly articulate the geographic extent of coverage or the points of discharge with respect to discharges into receiving waters. Because it is difficult to identify the actual “points” of discharge from an MS4 system, this standard provision should be deleted.
13	Tentative Order, VI.A.10 Pg. 42-43	Standard Provision 10 Inappropriately Prohibits the Discharge of Any Properly Registered Pesticide that Ultimately May be Released to Waters of the United States	The Tentative Order includes a standard provision that would effectively prohibit the discharge of any properly registered pesticide to any waste stream that may ultimately be released to waters of the United States. (Tentative Permit, p. 42-43.) Such a prohibition is inconsistent with applicable law. As proposed, this prohibition implies that any discharge of a pesticide may cause or contribute to a violation of an applicable water quality standard. However, such is not the case. There are many water quality objectives for pesticides that are set at low levels. A water quality objective at a low level is not equal to prohibition on any pesticide. Furthermore, there are many properly registered pesticides, which by legal definition include herbicides, which are not considered to be a threat to aquatic life or other applicable beneficial uses. Moreover, this standard provision overstates applicable law with respect to application of requirements for NPDES permits. For an NPDES permit to be required, there must be “a point source discharge of a pollutant to a water of the United States.” As proposed, this standard provision would apply to “any waste stream that may be released to waters of the United States.” Such a requirement is inconsistent with the CWA. (See 33 U.S.C. § 1342.) Finally, as proposed, this standard provision makes the Bureau potentially liable for discharges outside of its control. As discussed previously, the City can “effectively prohibit” discharges through ordinances and control programs, however, the Bureau cannot itself be held liable for discharges that occur in violation of the prohibitions established by the Bureau in its ordinances.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
14	Tentative Order, VI.A.14 Pg. 43-44	It is Inappropriate to Include Descriptions with Respect to the Regional Board’s Enforcement Authority	The standard provisions are considered operational provisions of the Tentative Permit, the violation of which are enforceable through the Regional Board’s discretionary authority and through actions brought by third parties through citizen suits. Accordingly, it is inappropriate to include as part of the standard provisions descriptions with respect to the Regional Board’s enforcement authority. To the extent that the Regional Board wants to inform the Permittees and the public about potential enforcement for violation of the permit, such language is more appropriate for inclusion as part of the findings or the fact sheet, not operational provisions of the permit. The Bureau requests that Standard Provision 14 be removed from the operational provisions of the Tentative Order.
PART VI.B: MONITORING AND REPORTING PROGRAM (MRP) REQUIREMENTS			
15	Tentative Order, VI.B Pg. 45	Revise language to provide flexibility in the monitoring programs to support the Watershed Management Programs	As discussed in Comment #79, flexibility is requested for a customized monitoring program to support the Watershed Management Programs. As such, the Bureau requests that the following language regarding flexibility, consistent with the language and approach used for the minimum control measures, is added to Part VI.B: “Dischargers shall comply with the MRP and future revisions thereto, in Attachment E, <u>or may in lieu of the requirements in Attachment E, implement a customized monitoring program as set forth in an approved Watershed Management Program per Part VI.C.</u> ”
PART VI.C: WATERSHED MANAGEMENT PROGRAMS (WMPs)			
16	Tentative Order, VI.C.1.b Pg. 45	Clearly Identify the Provisions Addressed via the Watershed Management Program.	See comments provided in Attachment A. The intent is to identify in one provision all of the elements that will be included in the Watershed Management Program, the provisions of the Order that will be fulfilled via the Watershed Management Programs, and that Permittees will be in compliance with these provisions via the implementation of the Watershed Management Programs.
17	Tentative Order, VI.C.1.d Pg. 46	Delete goal related to not causing exceedances of non-storm water action levels	As currently written in the Tentative Order, there is not a nexus between receiving water data (the basis for establishing watershed priorities per Part VI.C) and the non-stormwater action levels. Exceedances of the non-stormwater action levels may occur without any commensurate exceedance or impact in the receiving water. Establishing a goal that is based upon not exceeding non-storm water action levels would therefore negate the very intent of the Watershed Management Programs – focusing on priorities, as defined by receiving water issues. As discussed in Comment #130, non-storm water action levels are more appropriately used to prioritize BMPs within a watershed.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
18	Tentative Order, VI.C.2.b Pg. 47	Additional time is needed to develop the WMPs	See comments provided in Attachment A.
19	Tentative Order, VI.C.3.a.ii Pg. 47-48	Categorization should not presume all waterbodies exceed applicable water quality standards	As currently phrased, all waterbodies would be classified as exceeding applicable water quality standards. Category 3 should be revised as follows (additions in bold, underlined text; deletions in strike out text): Category 3: <u>Waterbody-pollutant combinations</u> Pollutants for which there are insufficient data to indicate <u>there is not a</u> water quality impairment in the receiving water according to the State’s Listing Policy, but which exceed applicable water quality standards.
20	Tentative Order, VI.C.3.b.ii Pg. 49	Redundant with Part VI.C.1.d	The goals listed for control measures are redundant with the goals identified in Part VI.C.1.d. and should be deleted. The implementation of control measures are the mechanism to achieve the goals identified in Part VI.C.1.d and no additional goals are necessary for Part VI.C.3.b.
21	Tentative Order, VI.C.3.b.iv.1 Pg. 50	Provide schedule for the implementation of Minimum Control Measures	Except few MCM provisions, most are not provided with an implementation schedule. During the July 9, 2012 workshop, Regional Board staff indicated that for MCMs similar to the existing permit, their implementation should be immediate. For those that are different or new, the process to set them in place should start upon the effective date of the Permit. The Bureau requests that language in the permit be provided for clarification.
22	Tentative Order, VI.C.3.b.iv.(1)(d) Pg. 51	Approved WMPs should replace in whole, not in part, the requirements in Part VI.D.4 – 9	While the WMPs may revise in whole or in part the existing requirements in Part VI.D.4 through Part VI.D.9, once approved, the WMP itself will be the document through which the Permittees will implement the stormwater program. In order to clearly identify the requirements for the Permittees, and provide clarity regarding how compliance with Part VI.D.4 through Part VI.D.9 will be determined, revise this provision as follows: Such customized actions, <u>which may modify in whole or in part the requirements in Part VI.D.4 to Part VI.D.9</u> , once approved as part of the Watershed Management Program, shall replace in whole or in part the requirements in Part VI.D.4 to Part VI.D.9 for participating Permittees.
23	Tentative Order, VI.C.3.b.iv.(2) Pg. 51	Provision should explicitly state that it applies to watershed priorities	The provision should explicitly state that it applies to watershed priorities and should be revised as follow: <u>For pollutants identified as a watershed priority and</u> where Permittees identify non-storm water discharges from the MS4 <u>as causing exceedances in the receiving water</u> as a source of pollutants in the source assessment , the Watershed Control Measures shall include...

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
24	Tentative Order, VI.C.3.b.iv(2)	Modify language to ensure non-stormwater discharge provisions do not negate the flexibility intended by the WMPs	<p>It is currently unclear how the non-stormwater action levels integrate with the concept of prioritization for the Watershed Management Programs. As noted in Comment #17, the fundamental purpose of the Watershed Management Programs is to address the highest watershed priorities, which per the Tentative Order, are based upon identified issues in the receiving water (via TMDLs and 303(d) listings). Non-stormwater action levels are not integrated into the Watershed Management Program approach and may negate the concept of prioritization. The non-stormwater action levels do not have a nexus to receiving water conditions and would require Permittees to investigate and address issues on an outfall by outfall basis, even if the pollutant is not causing exceedances in the receiving water and therefore not identified as a watershed priority. The Bureau has provided additional comments on how the non-stormwater action levels should be revised (see Comment #130). In addition, consistent with the language already used in the Tentative Order linking the Watershed Management Programs to the Receiving Water Limitations provisions, add the following language to Part VI.C.3.b.iv(2):</p> <p><u>Actions taken by Permittees as part of the Watershed Management Program to address non-stormwater discharges fulfill the requirements under Part III.A.4.c and Part III.A.4.d.</u></p>
25	Tentative Order, VI.C.3.b.iv.(4)(a) Pg. 52	Typo	<p>Please revise as follows:</p> <p>“...contained in this Part VI.E and Attachments L through R...”</p>
26	Tentative Order, VI.C.3.c.iii(3)(c) Pg. 53	Achieving Receiving Water Limitations within Permit Term may not be feasible	<p>TMDL schedules that have been adopted by Regional Board most typically exceed 5 years, which acknowledges that implementation of measures to attain water quality standards in receiving waters may exceed a Permit term. Additionally, as noted by EPA in multiple presentations by Deborah Nagle (Director, Water Permits Division, Office of Water) on EPA’s integrated planning framework (similar in concept and approach to the Watershed Management Programs), EPA acknowledges that the schedule to address water quality priorities will exceed a five year permit term (a recorded version of the presentation can be found here: https://www1.gotomeeting.com/register/497791865.)</p> <p>As the requirement to include a schedule that achieves milestones as soon as possible is included in Part VI.C.3.c.iii(3)(b), the Bureau requests that this provision in Part VI.C.3.c.iii(3)(c) is deleted in its entirety.</p>
27	Tentative Order, VI.C.2.a Pg. 46-47, Table 9	Schedule to commence implementation of WMP not consistent with referenced provision	<p>Part VI.C.4 requires implementation of the WMPs upon approval by the Regional Board Executive Officer, while Table 9 states implementation is required upon submittal of the final plan. Given the importance of Executive Officer approval to clearly identify the expectations for implementation of and compliance with the Order, and considering the potential for a petition for the Watershed Management Program to be heard by the Regional Board within 30 days of approval by the Executive Officer, Table 9 should be revised to be consistent with Part VI.C.4 and state “upon approval by the Executive Officer.”</p>

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
28	Tentative Order, VI.C.5 Pg. 54	Modify language to provide flexibility, consistent with concept and approach for MCMs	<p>As currently written, there does not appear to be sufficient flexibility to modify monitoring requirements to support the Watershed Management Programs. This is of particular concern for the outfall monitoring requirements, which, as currently written, will require a significant level of resources without clear benefit to addressing receiving water issues. The MRP should allow for modification of monitoring requirements to focus efforts on watershed priorities identified in the Watershed Management Programs to ensure the effective and efficient use of resources. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. The current MRP requirements, specifically the outfall monitoring requirements, will divert resources and attention from watershed priorities, which are focused on receiving water issues. The Bureau requests that Part VI.C.5 is modified as follows:</p> <ul style="list-style-type: none"> • Permittees in each WMA shall develop an integrated monitoring program and assessment program as set forth in Part IV of the MRP (Attachment E), <u>or in lieu of the requirements in Part IV of the MRP implement a customized monitoring program as set forth in an approved Watershed Management Program per Part VI.C. Each monitoring program shall</u> to assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the highest water quality priorities for each WMA. <u>The monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:</u> <ul style="list-style-type: none"> ○ <u>Receiving Water Monitoring</u> ○ <u>Stormwater Outfall Monitoring</u> ○ <u>Non-Storm Water Outfall Monitoring</u> ○ <u>New Development/Re-Development Effectiveness Tracking</u> ○ <u>Regional Studies</u>
29	Tentative Order, VI.C.6.a.i.(4) and VI.C.6.a.i.(7) Pg. 54	Adapting the WMPs to re-evaluate watershed priorities and soliciting public feedback is not feasible on an annual basis	Given the amount of resources necessary to develop the WMPs, modifications during the Permit term should be limited to areas that improve upon the current goals and objectives. Modifications that would significantly change the WMPs, such as re-evaluating the highest watershed priorities and soliciting feedback via a public participation process, are more appropriately done once per Permit term as part of the Report of Waste Discharge, or every five years, whichever is sooner.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
PART VI.D: STORMWATER MANAGEMENT PROGRAM MINIMUM CONTROL MEASURES			
30	Tentative Order, VI.D.2.a.v Pg. 57	Sites under Industrial and commercial General Permits should be under the purview of Waterboards	This provision requires the permittees to conduct additional enforcement action prior to referral to Regional Board. The Bureau recommends that violations of the Industrial and Construction General Permits can be immediate and there should not have to be inspected and sited by the permittees prior to the referral. Again these facilities are under the purview of the State. This Permit can be used as an opportunity to streamline the oversight of these facilities and improve the efficiency of both municipal and State inspection units.
31	Tentative Order, VI.D.4.c.ii Pg. 59	Minor revision	Add " <i>Participate in or</i> organize events targeted to residents and population subgroups to educate and involve the community in stormwater..."
32	Tentative Order, VI.D.4.d.3 Pg. 60	Targeted facilities	Please consider removing pharmacies from the list. Improper disposal of drugs are already been in the focus of municipal wastewater and refuse collection programs. Instead consider including paint stores to the list.
33	Tentative Order, VI.D.6.c.i.2 Pg. 70	Remove “whichever is greater” wording	Consider removing the “whichever is greater” wording. In calculating the design Stormwater Quality Design Volume (SWQDV), either the 0.75 inch or the 85 th percentile can be used. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
34	Tentative Order, VI.D.6.c.i.4 Pg. 70	Green roofs should not be considered for on-site retention	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible. Their infeasibility is due to regional climate and implementability considerations. Clarify as it was explained in the July 9 th Workshop that permittees will have the discretion to outright consider green roofs as unfeasible.
35	Tentative Order, VI.D.6.c.ii.2.a Pg. 70	Suggested infiltration infeasibility	Infiltration technical infeasibility should be based on 1) an infiltration rate, $K_{sat} \leq 0.3$ in/hr and connectivity to higher K_{sat} soils is infeasible; and 2) amending in-situ soil is infeasible

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
36	Tentative Order VI.D.6.c.iii Pg. 71	Offsite mitigation will be difficult to implement	Even without the proposed restrictions to offsite mitigation, the Bureau believes that this alternative will be rarely exercised. As part of the City’s low impact Development, an in-lieu fee was considered and not incorporated and we view onsite mitigation as the most practical approach. The State’s Mitigation Fee Act, California Code Section 66000-66008 has additional requirements for collecting mitigation fees for approving development projects. These restrictions create cumbersome, accounting, and legal consideration and the City may not be able to meet. For these reasons we encourage flexibility in implementing on-site BMPs, including allowing planter boxes with impermeable liner and treatment systems without the need of implementing offsite projects.
37	Tentative Order VI.D.6.c.iii Pg. 71	Biofiltration should be considered equivalent to retain on-site.	If the 1.5 x SWQDv requirements is kept that allows for the over-sizing of the biofiltration BMPs, please clarify that the biofiltration BMPs are considered as equivalent as “retain on site” BMPs. Biofiltration BMPs such as planter boxes allow for a significant loss of the stormwater runoff through evaporation and transpiration.
38	Tentative Order VI.D.6.c.iii.1.b.ii Pg. 71	No need to have raised underdrains	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created. Also the second sentence should refer to Appendix H not I.
39	Tentative Order VI.D.6.c.iii.2.b Pg. 72	No need to provide on-site treatment when offsite mitigation is used.	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing this on-site requirement when mitigation occurs in an offsite location.
40	Tentative Order, I.D.6.c.iii.4.b Pg. 73	Allow offsite location flexibility	The conditions listed for offsite projects are overly restrictive. Consider expanding the location of the offsite projects to within watershed or within the permittees jurisdiction so there will be better opportunities and flexibility for permittees.
41	Tentative Order, I.D.6.c.iii.4.c Pg. 73	Delete groundwater recharge as a priority	The emphasis of this permit should be focused on water quality. The requirement to place projects to maximize ground water recharge benefit will not necessarily improve water quality.
42	Tentative Order VI.D.6.c.iii.4 d, f, h 73 -74	In-lieu fee is not feasible	These conditions will make it very difficult for the permittees to implement. Our experience when considering an in-lieu fee for untreated runoff was that there would not be enough fees collected to implement a project. In addition the proposed fee was scrutinized and challenged by the building industry and this condition may not be legally defensible. Please remove these conditions is offsite mitigation is kept as an alternative.
43	Tentative Order VI.D.6.c.iv.1 Pg. 74	Minor item	New development and redevelopment projects should be referred to as “new projects” as indicated in page 69, item C.i.1.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
44	Tentative Order VI.D.6 Table 11 Pg. 75	The proposed effluent benchmarks are not feasible and should be replaced by design parameters	We support the removal of the monitoring requirements for new projects as “they had appeared in the “working Proposal” document. However since there are no monitoring requirements, the permit should not specify benchmark standards but instead design parameters such as an acceptable flow through rate (i.e: 100 in/hr). The effluent concentration benchmarks for treatment BMPs will not be attainable when considering that these values were selected from the median of the best available datasets of the stormwater BMP database site.
45	Tentative Order VI.D.6.c.v.1.a.i Pg. 75	Ep is not widely used	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
46	Tentative Order VI.D.6.c.v.1.a.iv 76	Use the State’s Hydromodification Policy instead	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements on the existing MS4 Permit and that the State Water Board is finalizing the Statewide Hydromodification Policy.
47	Tentative Order VI.D.6.c.v.1.c.i.1 Pg. 77	Excessive Hydromodification Control design parameters	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
48	Tentative Order VI.D.6.d.iv.1 Pg. 81	Schedule	The requirement for implementing these provisions within 60 days is reasonable however for reasons of consistence please considers providing a timeline for all other provisions that do not have a schedule or clarify when the newly required provisions for their implementation process should be initiated.
49	Tentative Order VI.D.7.d Pg. 83	There is no threshold for construction projects	Consider introducing a minimum threshold for construction sites such as those for grading permits. As written minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
50	Tentative Order VI.D.7, Table 12 Pg. 83	Not all proposed construction BMPs in Table 12 will be applicable	Some of the listed BMPs will not be applicable for all construction sites. Please consider replacing the title of the Table 12 to “Applicable Set of BMPs for Construction Sites”
51	Tentative Order VI.D.7.e-j Pgs 84-90	General Construction Permit sites are under the purview of the State.	All these provisions refer to the construction sites than are greater than one acre. As such these sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. Please consider maintaining these sites under State purview.
52	Tentative Order VI.D.7.g-j Pgs 84-90	Please refer to General Construction Permit instead of including many of these provisions.	Much of the proposed language is taken fro the General Construction Permit. However as a way of reducing the length of the text and prevent conflicting requirements please consider referring to the GCP and its SWPPP requirements.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
53	Tentative Order VI.D.7.g.ii.9 Pg. 85	Please use SWPPP terms instead of ESCP	The term Erosion and Sediment Control Plan is introduced. There is no need to introduce a new document for construction sites that are subject to GCP's SWPPP requirements.
54	Tentative Order Table 13 Pg. 87	Delete Table 13	Delete Table 13 which is the same as Table 12.
55	Tentative Order Table 17 Pg. 90	The City of Los Angeles will not be able to accommodate this inspection requirement.	The suggested inspections could not be possibly accommodated based on current resources because of the concurrent need to visit all sites. The City of Los Angeles has limited inspection staff, and these requirements will introduce significant staffing needs during the rain season. We believe that inspecting GCP sites is the purview of the State.
56	Tentative Order VI.D.7.j.ii.2.a Pg. 90	Delete requirement for inspection prior to construction	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned construction phases. A better requirement would be to inspect sites at the beginning of the rain season such as the months of September and October.
57	Tentative Order VI.D.8.f.ii Pg. 99	Allow for exposed washing facilities if equipped with rain diversion gages	Consider using the language as appears in the 2001 MS4 Permit. Some older washing facilities are still open and not self-contained, however they are equipped with rain diversion gages that minimizes to a large extent the release of stormwater pollution.
58	Tentative Order VI.D.8.h.ii Pg. 100	Delete the recommended approach on how to dispose liquid material	The process by which the material removed from MS4 should not be allowed to reenter the MS4 is unnecessarily prescriptive. Additional option that the two listed for disposing liquid material exist and permittees should be these options. Consider including only the first sentence of this subsection.
59	Tentative Order VI.D.8.h.vii Pg. 102	Retrofit of catch basins in non-TMDL areas.	It is unreasonable to prescribe the installation of CB curb opening screens on catch basins that are located within a watershed that has not been identified as being impaired for trash. This requirement should be removed since if an impairment is identified it would be address through a TMDL.
60	Tentative Order VI.D.8.i.iv.1 Pg. 105	Delete the second sentence of this provision.	The requirement to clean a parking lot, once a month, even if inspection indicates no presence of debris or oil buildup, is unnecessary.
PART VI.E: TOTAL MAXIMUM DAILY LOADS (TMDLs)			

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
61	<p>Tentative Order VI.E.2.b.v.2 VI.E.2.d.i.2 VI.E.2.e.i.2 Pg. 112, 113, 114</p>	<p>Please correct the language as recommended</p>	<p>Since the ultimate end goal of the TMDL is protection of beneficial uses, attainment of water quality objectives/criteria protective of those uses should constitute compliance with the TMDL. However, Section E Parts 2.b.v.2, 2.d.i.2, and 2.e.i.2 limits this concept to applicable receiving water limitations. If water quality objectives/criteria are met in the receiving waters, Permittees should be in compliance with the TMDL regardless if the receiving water limitation is explicitly incorporated into the permit.</p> <p>Additionally, the language places upstream dischargers in jeopardy if downstream dischargers cause or contribute to exceedances. The current language indicates that compliance can be demonstrated if there are no exceedances at, or downstream of, the Permittee’s outfall. For example, if a water quality objective is met in Reach 6 of the LA River but not in Reach 2 (over 20 miles downstream and a change in flow of over 80 cfs), those discharging to Reach 6 could be considered out of compliance.</p> <p>Based on these issues, please revise as follows: Section E Part 2.b.v.2 “Demonstrate that the discharge from the Permittee’s MS4 is treated to the level that does not exceed the applicable water quality-based effluent limitation <u>or water quality objective.</u>”</p> <p>Section E Parts 2.d.i.2 and 2.e.i.2 as follows: There are no exceedances of the applicable receiving water limitation <u>water quality objectives</u> for the pollutant(s) associated with the specific TMDL in the receiving water(s) at, or downstream of, the Permittee’s outfall(s).</p>
62	<p>Tentative Order VI.E.2.d.i.4.b Pg. 113</p>	<p>Clarify the intended purpose of design standard</p>	<p>This incorporation of such a design standard seems to imply that during larger storms, water quality standards may not have to be met. Also please clarify if this is a recommendation or the intent is to prohibit the implementation of BMPs that will provide partial treatment of this design storm.</p>
63	<p>Tentative Order Note 38 Pg. 113</p>	<p>Provide a consistent definition of outfall</p>	<p>Suggested text for Note 1: A municipal stormdrain outfall (or conduit) shall have a minimum pipe size of 24-inch diameter where a maintenance access or other point of access can be built based on hydraulic engineering design standards at the Permittee’s jurisdictional boundary.</p>
64	<p>Tentative Order VI.E.3.d Pg. 115</p>	<p>Additional time is needed for Watershed Management Plan</p>	<p>Please note our comment regarding additional time will be needed for a more comprehensive Watershed Management Program Plan in Attachment A.</p>
65	<p>Tentative Order VI.E.4.b Pg. 116</p>	<p>Establish an iterative/adoptive approach for State Adopted TMDLs</p>	<p>This provision will put the City of Los Angeles in immediate determination of non-compliance and will require us to request a time schedule order within 45 days of the effective day of the permit. The City developed implementation plans for compliance of these TMDLs, however RWQCB staff did not provide any feedback or acknowledge that the proposed actions will be acceptable. We request that the State Adopted TMDLs, where final Compliance Deadlines have passed or are required prior to the development of the Watershed Management Program, be treated similar of the EPA promulgated TMDLs, and be required to submit updated implementation plans as part of the Watershed Management Program Plan.</p>

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
66	Tentative Order VI.E.5.b.i.2.b Pg. 119	The DGR or similar exercise to quantify institutional controls should be done for two consecutive years during the permit 5-year cycle.	The intent of the DGR is to obtain a measure of the effectiveness of institutional controls. Institutional controls are those measures/programs that adjust human behavior, in this case not contributing to stormwater pollution. These are typically long term programs and their results are not immediate. Prescribing an annual DGR is not sensible since representative data collection may not be realized.
67	Tentative Order VI.E.5.c.i Page 122	Inconsistent reporting due dates	This section states that the compliance report is due October 31, 2012; while Attachment E, Section XIX TMDL Reporting, pg. E-56 states that a report is due December 15, 2013. Please revise the dates to be consistent.
ATTACHMENT A: DEFINITIONS			
68	Definitions A-1	Industry-Established Definitions	Allow industry-established definitions for specific BMPs such as Biofiltration, bioretention, bioswale, green roof, infiltration, planter boxes (other flow through treatment BMPs), rainfall harvest & use and thus no need to define them here. However, if it is decided to keep them, we suggest the revisions as shown below.
69	Definitions A-1	Biofiltration	Industry standards considers planter boxes are a form of biofiltration. Recommend incorporating the language from the planter boxes definition into the biofiltration. Depending on the soil conditions, biofiltration may or may not be infiltrated into the ground; regardless runoff will be infiltrated through a soil media.
70	Definitions A-2	Bioretention	Definition should not go into designing the BMP. Recommend removing the 2 nd sentence of the definition.
71	Definitions A-4	Green roof	Green roof means a roof that is partially or completely covered with vegetation and a growing medium, planted over a waterproofing membrane. It may also include additional layers such as a root barrier, subdrain, and irrigation system.
72	Definitions A-5	Infiltration	Downward movement of water through soil in-situ soils or amended soils. For consistency, if examples are going to be given, each BMP definition should be given examples. Recommend removing the 2 nd line of the current definition. Also provide definition for uncontaminated ground water infiltration that refers to the introduction of groundwater to the MD4 system as defined on page 27 of the Order.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
73	Definitions A-7	Planter boxes and other high flow treatment BMPs	Planter boxes should not be grouped with the high flow treatment BMPs. In the City of Los Angeles, we have been requiring planter boxes to have a flow-through velocity less than 5 inch/hour rate. Please define “high flow treatment BMPs” and a specific flow through rate. Also please accept planter boxes as one of the biofiltration options even if they do not allow for incidental infiltration. In the city of Los Angeles, planter boxes are one of the most common BMPs. This was reaffirmed with the recently implemented LID requirements that involved participation with Heal the Bay and other environmental advocacy organizations. Removing planter boxes as an option will make the land Development and Planning Requirements unattainable.
74	Definitions A-8	Rainfall harvest and use	Definition should not limit capture only from the roof and it should be open to capture runoff from the entire site if feasible.
75	Definitions A-1 to A-9	Terms to be added	Please add the following definitions; Municipal Action Level (MAL), Non-Storm Water Action Level, Areas of Special Biological Signification (ASBS), and Minimum Control Measure (MCM)
76	Definitions A-1 to A-9	Terms to be deleted	These terms are in the definitions section. They appear to be terms used for wastewater permit requirements and are not used anywhere in this permit language. They are Average Monthly Effluent Limitation (AMEL), Daily Discharge, Dilution Credit, Instantaneous Maximum Effluent Limitation, Instantaneous Minimum Effluent Limitation, Maximum Daily Effluent Limitation (MDEL), Mixing Zone, and Satellite Collection System. Please delete these terms from the Attachment A.
77	Definitions A-10 to A-12	Acronyms and Abbreviations	Please include these acronyms and Abbreviations; EMC and MUN
ATTACHMENT D: STANDARD PROVISIONS			
78	Standard Provisions D-1 To D-11	Repeated sections’ titles	There is Subsection VI.A also named Standard Provisions. Consider renaming this section as “Additional Standard Provisions”

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
ATTACHMENT E: MONITORING AND REPORTING PROGRAM			
79	Attachment E	Flexibility is needed to focus efforts on watershed priorities	The MRP should allow for modification of monitoring requirements to focus efforts on watershed priorities. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. As currently written, there does not appear sufficient flexibility to modify monitoring requirements. This is of particular concern for the outfall monitoring requirements, which, as currently written, will require a significant level of resources without clear benefit to addressing receiving water issues.
80	Attachment E II.E.2.b	Revision to storm water outfall monitoring goal to apply only to TMDLs with final compliance dates during the Permit Term	Determining compliance with applicable wet weather WQBELs derived from TMDL WLAs is only necessary when the final compliance date is within this Permit term. As the collection of such data is costly, it should only be required if (1) the Permittee elects to assess compliance at the outfall in lieu of the receiving water and (2) if the final TMDL compliance date is within the Permit term. Therefore, the objective should be revised as follows: “Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs <u>with final compliance dates within the term of the Order.</u> ”
81	Attachment E II.E.3.a	Revision to storm water outfall monitoring goal to apply only to TMDLs with final compliance dates during the Permit Term	As noted in Comment #80 related to wet weather WQBELs, determining compliance with applicable dry weather WQBELs derived from TMDL WLAs is only necessary when the final compliance date is within this Permit term. Therefore, the objective should be revised as follows: “Determine whether a Permittee’s discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs <u>with final compliance dates within the term of the Order.</u> ”
82	Attachment E, II.E.4., Pg. E-4	Program element language should be consistent	The information that is expected be generated to evaluate the effectiveness of new development/re-development (Attachment E. Part X) is focused on tracking and documenting the each new development/re-development subject to the requirements of Part VI.D.6 of the Order. As such, the monitoring program elements in Attachment E. Part II should be consistent. Please revise Part II.E.4 as follows: New Development/Re-development effectiveness monitoring <u>tracking</u> . The objective of best management practices (BMP) effectiveness monitoring <u>tracking</u> is to determine <u>track</u> whether the <u>conditions in the building permit issued by the Permittee are implemented to ensure the volume of storm water associated with the design storm is retained on-site as required by Part VI.D.6.c.i of this Order, and as conditioned in the building permit issued by the Permittee.</u>

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
83	Attachment E, III.F.2, Pg. E-5	Grab samples may be appropriate for additional constituents or sampling approaches	<p>The current requirement limiting grab samples for bacteria, oil and grease, cyanides, and volatile organics unnecessarily limits the ability for MS4s to collect grab samples for other constituents that are intended to be collected as grab (i.e., chromium) and instances where grab samples are considered to appropriately characterize conditions (i.e., dry weather). Suggest removing the sentence or alternatively revise as follows:</p> <p>Grab samples shall be taken only for <u>constituents that are required to be collected as such (i.e., pathogen indicator bacteria, oil and grease, cyanides, and volatile organics) and in instances where grab samples are generally expected to be sufficient to characterize conditions (i.e., dry weather).</u></p>
84	Attachment E, III.H, pg. E-6	Reporting requirements are spread throughout the MRP and create confusing requirements	<p>Part III.H is the first of a number of requirements related to reporting. The requirements in the MRP appear duplicative at times and led to some confusion. Please either remove Part III.H as the reporting requirements are laid out in detail in Parts XIV through XVIII or revise Part III.H.1 to simply refer to Parts XIV through XVIII.</p>
85	Attachment E, IV.A Pg. E-6	Flexibility is needed to focus efforts on watershed priorities	<p>The IMPs should allow for modification of monitoring requirements to focus efforts on watershed priorities. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. As currently written, the IMP requirements appear to only allow flexibility to modify screening approaches for dry weather outfall monitoring. More efficient approaches may be justifiable for other components of the IMP and should be allowed. Please revise Part IV.A.4 as follows:</p> <p>Where appropriate (e.g., dry weather outfall based screening program), the Integrated Monitoring Program may develop and utilize <u>alternative approaches to meet the Primary Objectives (Part II.A) and address the five Monitoring Program elements (Part II.E). Sufficient justification shall be provided in the IMP for the alternative approach(es). The alternative approach(es) must be screening level monitoring strategies to avoid more costly analytical procedures</u> if approved by the Regional Water Board Executive Officer.</p>
86	Attachment E, IV.B Pg. E-7	Flexibility is needed to focus efforts on watershed priorities	<p>The CIMPs should allow for modification of monitoring requirements to focus efforts on watershed priorities. The WMP will identify specific priorities based on TMDLs and 303(d) Listings, which will allow MS4s to tailor monitoring to address the Primary Objectives and provide data to support management decisions. As currently written, the CIMP requirements do not appear to allow flexibility to modify monitoring approaches. More efficient approaches may be justifiable for other components of the CIMP and should be allowed. Please add a new bullet to Part IV.B. as follows:</p> <p>Where appropriate, the Coordinated Integrated Monitoring Program may develop and utilize alternative approaches to meet the Primary Objectives (Part II.A) and address the five Monitoring Program elements (Part II.E). Sufficient justification shall be provided in the CIMP for the alternative approach(es). The alternative approach(es) must be approved by the Regional Water Board Executive Officer.</p>

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
87	Attachment E, IV. A.6 E-7	Reduction in the monitoring efforts should be allowed	Just for clarification, this provision for the IMP to address all TMDL and Non-TMDL monitoring does not prevent a reduction in the frequency, number of locations, or parameters. We anticipate that integrating all monitoring programs will result in a more efficient monitoring effort where the number of sampling events and analyses may be significantly reduced.
88	Attachment E, IV.C.3 Pg. E-7	Additional time is needed to complete CIMPs	Twelve months is not sufficient time to complete a CIMP. Individual watersheds can have upwards of 40 agencies that may participate in a CIMP. Additionally, Regional Studies that may be addressed by CIMPs could include all 80 plus LA County Copermittees. For reference, TMDL requirements for monitoring program submittal, which tend to address one type of constituent, typically exceed 12 months. For more complicated monitoring (such as the LA/Long Beach Harbors) TMDL have 20 months. The primary challenge for submitting coordinated monitoring programs is twofold: 1) working with a large group to come to consensus on a technical approach and 2) developing and signing agreements (cost sharing and memoranda of agreement). To truly allow for a coordinated approach that allows Permittees to develop a robust technical approach and work through the approval process (often through City council approval) at least 18 months are needed. Please revise the requirement for CIMPs to be submitted from 12 months to 18 months.
89	Attachment E, Table E-1 Pg. E-11	Machado Lake Pesticides & PCBs TMDL	The table states that the Monitoring Plan is due on September 20, 2012. However per attachment A to Resolution No. R10-008, “Table 7-38.2. Machado Lake Pesticides and PCBs TMDL, Implementation Schedule”, Page No. 13, Task Number 4 the deadline is 1.5 years from effective date of the TMDL which was March 20, 2012. Thus the Monitoring Plan is due September 20, 2013. Please make this correction.
90	Attachment E, Table E-1 Pg. E-12	Los Angeles River Nitrogen Compounds and Related TMDLs	Table E-1 indicates that the Monitoring plan was due in March 2005. The County of Los Angeles, in cooperation with the City of Los Angeles, submitted the required document in March 2005.
91	Attachment E, VI.C.b.ii Pg. E-14	Trigger for initiating wet weather sampling	Permittees should be allowed to utilize an alternative to the prescribed rainfall triggers for conducting wet weather monitoring. Permittees have been monitoring the LA region watersheds for years and have a good understanding of how each watershed responds to rainfall events under varying circumstances. As such, the Permit should allow Permittees to propose an alternative in the C/IMPs to the prescribed rainfall triggers.
92	Attachment E, VII.A.10 Pg. E-16	MS4 Map and Outfall Database	The City of Los Angeles has a comprehensive database of its stormwater collection system. However there is no dataset with Effective Impervious Area (EIA) overlay for our region. Also we don’t have data on their consistency of having non-stormwater discharges. Furthermore occasionally we observe errors or missing and outdated data. Please understand that these discrepancies would not constitute a violation.
93	Attachment E, VII.A.11 Pg. E-17	Requirement to photograph every outfall	Requiring MS4s to photograph every outfall is extremely burdensome for large cities. This one component of the MRP would require significant resources of those MS4s that are adjacent to waterbodies, or in the case of the City waterbodies in multiple watersheds. Request that the photographs be included in the database “if available.”

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
94	Attachment E, VIII.A, pg. E-17	Flexibility is needed to focus efforts on watershed priorities	The current permit language requires each Permittee to select one site per jurisdiction per HUC-12 watershed. In the LA River watershed alone 108 sites would be required to meet this requirement. This requirement would result in a significant cost to Permittees without a commiserate benefit. The approach results in sites that have comingled discharges from multiple land uses making the data difficult if not impossible for Permittees to use in evaluating where to focus minimum control measures and source control BMPs as well as where to site and build structural controls to treat stormwater. Furthermore, the proposed approach would still require Permittees to extrapolate the data to calculate their total loads to receiving waters and evaluate the potential impact. However, this approach would be fraught with inaccuracies as one would have to try and desegregate land uses to apply the loadings to other outfalls within the Permittee’s jurisdiction. Flexibility should be provided such that an alternative approach could be submitted with the IMP or CIMP. Such an alternative could include the monitoring of representative land use sites. A representative land use approach would provide Permittees the core data needed to evaluate their overall loading to receiving waters as well as utilize a modeling approach to identify problematic areas and develop and implement control strategies through the WMP.
95	Attachment E, VIII.A.1, pg. E-17	Wet weather monitoring at manholes is often unsafe and infeasible	Sampling in manholes results in entering confined space, often in roads such as major arterials, which can be very expensive because of additional safety requirements for the crew and the need to coordinate with police regarding traffic impacts. Please add “where feasible given technical and safety constraints” following the word manhole.
96	Attachment E, VIII.B.1, pg. E-17	Toxicity testing of MS4 discharges is inappropriate	MS4 discharges are not the same as wastewater plant effluent which represents a single continuous discharge of typically consistent quality to receiving waters. Rather, urban runoff is episodic in nature. Furthermore, individual outfalls carry a minute percentage of the total flow in the receiving waters and as such toxicity observed in one outfall sample will likely have no effect on the receiving water. The current approach is appropriate for wastewater discharges but not urban runoff and they should be treated differently. The more appropriate approach for urban runoff is to identify whether toxicity exists in the receiving water, identify pollutants that are causing toxicity through toxicity identification evaluations (TIEs), and then incorporate monitoring of pollutants that are causing toxicity into the outfall monitoring. Please remove toxicity monitoring requirements from the stormwater outfall monitoring program.
97	Attachment E, VIII.B.1.c, pg. E-18	Flow measurement is not needed	Flow is a parameter that can easily and relatively accurately be estimated based on the drainage area, and the precipitation data for each outfall. Requiring flow measuring equipment for outfall measurement will further increase the cost to about \$30,000 per location. Consider deleting the flow measuring requirement.
98	Attachment E, IX.E, pg. E-21	WMP and C/IMPs should set the priorities for source ID	The permit provides flexibility to select the method by which Permittees determine significant non-stormwater discharges. Similar flexibility should be provided in setting priorities for source investigation. Flexibility should be provided such that an alternative approach could be submitted with the IMP or CIMP. It appears this flexibility is provided and we support this approach.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
99	Attachment E , IX.F.3 and G, pg. E-22	Requirement to conduct water quality monitoring of significant non-stormwater discharges	Requiring Permittees to monitor all significant non-stormwater discharges results in a disconnect between receiving water issues and monitoring, is inconsistent with some TMDL implementation schedules, and will result in Permittees being required to take action at drains that are not a priority as identified in the WMP. As an example of inconsistencies with receiving water issues, based on the data collected in Reaches 1, 3, 4, 5 and the Burbank Western Channel (the reaches original listed in the TMDL), the LA River is meeting ammonia TMDL targets. Having MS4s in the LA River monitor for ammonia, as currently required, at all outfalls is not necessary since MS4 discharges are not causing an impairment as there is no impairment. Additionally, the Permit requires actions to be taken based on outfall data, even though there is no corresponding receiving water issue. As an example of inconsistency with a TMDL, the LA River Bacteria TMDL prioritizes outfall monitoring and implementation on a reach by reach basis. The intent was to require Permittees to focus efforts on the priorities as outlined in the TMDL. If outfall monitoring is required everywhere and action must be taken then there is no prioritization as required in the TMDL. Flexibility should be provided such that an alternative approaches could be submitted with the IMP or CIMP. Alternatives could include changes to the constituents monitored based on watershed priorities (i.e., not including constituents for which there is no receiving water impairment even though there is a TMDL or where a TMDL implementation schedule explicitly incorporates priorities). Additionally, alternatives to the monitoring approach could include conducting snap shot sampling events where all discharges over a short time period are sampled rather than spaced out quarterly as currently required.
100	Attachment E , IX.G, pg. E-22	Toxicity testing of MS4 discharges is inappropriate	MS4 discharges are not the same as wastewater plant effluent which represents a single continuous discharge of typically consistent quality to receiving waters. Rather, urban runoff is episodic in nature. Furthermore, individual outfalls carry a minute percentage of the total flow in the receiving waters and as such toxicity observed in one outfall sample will likely have no affect on the receiving water. The current approach is appropriate for wastewater discharges but not urban runoff and they should be treated differently. The more appropriate approach for urban runoff is to identify whether toxicity exists in the receiving water, identify pollutants that are causing toxicity through toxicity identification evaluations (TIEs), and then incorporate monitoring of pollutants that are causing toxicity into the outfall monitoring. Please remove toxicity monitoring requirements from the non-stormwater outfall monitoring program.
101	Attachment E , IX.H.2, pg. E-24	Requirement to collect composite samples during dry weather	Collection of dry weather samples as composite samples rather than grab samples is unnecessary to characterize conditions during dry weather and will significantly increase the cost of sample collection without a commiserate benefit. Current Regional Board approved TMDL CMPs allow for grab samples during dry weather as do LA Region wastewater NPDES permit receiving water monitoring requirements. The requirement to collect flow-weighted composite samples should be removed.
102	Attachment E , X, pg. E-24	Land Development Tracking	This list of effectiveness tracking does not match with the information provided on Section Vi.D.6.d.iv on page 82. Also delete item 11 from the list since this is not a site specific feature and can be easily mapped for our region using rain gage data.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
103	Attachment E, XI.A E-25	Pyrethroid Study	Monitoring for Pyrethroids is a task that requires samples to be sent to special laboratories outside city/EMD that are equipped with instruments to analyze the eight compounds to detection levels as close to 1 ng/g dry weight. Therefore preparing the samples to be analyzed individually and reporting is not feasible in 90 days, and requires more time than analysis of the samples in-house. <i>Request to reporting of the data to be extended to 150 days from sample collection date.</i>
104	Attachment E, XI.B E-28	SMC watershed monitoring program	SMC monitoring program requiring each MS4 to sample 6 sites from different land uses in their watershed and report on a common data base equates to 90 sites. This monitoring is very comprehensive in answering a) what is the conditions of streams in s. California, b) what are the stressors that affect stream condition. Any additional monitoring as prescribed in stormwater outfall based and non-stormwater outfall based monitoring (E-17 to E-20) may be already conducted as part of SMC. Subsequently, additional monitoring based on this permit may be found to be duplicative. If outfall monitoring is conducted as part of SMC program, it would be included as part of IMP or CIMP to regional board.
105	Attachment E, XII Pg. E-28	Toxicity monitoring methods	The toxicity monitoring methods required appear to be based on wastewater treatment plant toxicity testing requirements. The application of a wastewater approach is inappropriate for monitoring related to urban discharges and effects in receiving waters. Additionally, LA MS4 permits are the only MS4 permits we are aware of that require outfall toxicity monitoring and prescribe follow-up requirements that are essentially the same as wastewater plants. This section should be revised so that the approach is appropriate for addressing MS4 issues.
106	Attachment E, XII, pg. E-28	Toxicity testing of MS4 discharges is inappropriate	MS4 discharges are not the same as wastewater plant effluent which represents a single continuous discharge of typically consistent quality to receiving waters. Rather, urban runoff is episodic in nature. Furthermore, individual outfalls carry a minute percentage of the total flow in the receiving waters and as such toxicity observed in one outfall sample will likely have no affect on the receiving water. The current approach is appropriate for wastewater discharges but not urban runoff and they should be treated differently. The more appropriate approach for urban runoff is to identify whether toxicity exists in the receiving water, identify pollutants that are causing toxicity through toxicity identification evaluations (TIEs), and then incorporate monitoring of pollutants that are causing toxicity into the outfall monitoring. Please revise so that the toxicity monitoring requirements are only applicable to receiving water monitoring.
107	Attachment E, XII.F.1.a&b, pg. E-29	Defining receiving water and effluent limits in the MRP	The MRP is not the appropriate place within a NPDES permit to assign receiving water and/or effluent limitations within a permit. Currently Part XII.F.1.a&b essentially sets toxicity effluent limitations. Part XII.F.1.a&b should be removed.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
108	Attachment E, XII.F, pg. E-29	Conditions during which acute toxicity testing is conducted	Part XII.F does not clearly state under what flow conditions acute toxicity testing should be conducted. Additionally, Part XII.F.2.c states that Permittees may elect to report midpoint results from a chronic test as acute results. However, acute testing should only be conducted during wet weather and chronic testing should only be conducted during dry weather. Conducting a seven day (168 hours) toxicity test to evaluate the effects of storms in the LA region that typically only result in elevated flows for less than 48 hours provides no relevant information on receiving water conditions. Similarly, requiring acute testing during dry weather when conditions are stable provides no relevant information on receiving water conditions. Additionally, acute effects will be observed in chronic tests. Please clarify that acute toxicity testing is to be conducted during wet weather. At a minimum, do not limit the ability of Permittees to use data generated during chronic tests to calculate acute endpoints to top smelt as currently proposed.
109	Attachment E, XII.F.2.c.i, pg. E-30	TIE trigger	The proposed TIE triggers are based on wastewater permitting and are not appropriate for MS4 monitoring. The proposed thresholds should be replaced with a 50% mortality threshold consistent with the approach recommended in guidance published by USEPA for conducting TIEs (USEPA, 1996, Marine Toxicity Identification Evaluation. Phase I Guidance Document EPA/600/R-96/054), which recommends a minimum threshold of 50% mortality because the probability of completing a successful TIE decreases rapidly for samples with less than this level of toxicity. Additionally, experience in conducting TIEs in receiving waters in the region supports using a higher percent mortality trigger to provide a reasonable opportunity for a successful TIE. During TMDL monitoring in the Calleguas Creek Watershed (CCW) in 2003 and 2004, TIEs were initiated on samples exceeding the 50% threshold (the majority of which displayed 100% mortality. In that study, toxicity degraded in approximately 40% of the samples on which TIE procedures were conducted making the results inconclusive (and effectively useless in pinpointing specific toxicants). The Regional Board approved monitoring program for the CCW Toxicity TMDL utilizes a 50% threshold for TIE initiation. If a 50% threshold is an acceptable approach for a toxicity TMDL that focuses on receiving water issues as well as various types of discharges (i.e., MS4, agriculture, and wastewater) it should also be acceptable in a MS4 permit. The City is not opposed to conducting TIEs, rather, TIEs should be initiated where there is a reasonable chance of successfully identifying the pollutant(s) causing toxicity. As such, the proposed TIE trigger should be replaced with a threshold of 50% mortality.
110	Attachment E, XII.G.3, pg. E-30	Conditions during which chronic toxicity testing is conducted	Part XII.G.3 does not clearly state under what flow conditions chronic toxicity testing should be conducted. Chronic testing should only be conducted during dry weather. Conducting a seven day (168 hours) chronic toxicity test to evaluate the effects of storms in the LA region that typically only result in elevated flows for less than 48 hours provides no relevant information on receiving water conditions. Similarly, requiring acute testing during dry weather when conditions are stable provides no relevant information on receiving water conditions. Additionally, acute effects will be observed in chronic tests. Please clarify that chronic toxicity testing is to be conducted during dry weather.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
111	Attachment E, XII.G.3.a, pg. E-31	Requirement to conduct three species testing	Notwithstanding the previous comments requesting the removal of outfall toxicity testing, the requirement to conduct three species testing at outfalls will result in a significant additional cost (essentially tripling of costs) without a demonstrated benefit. Furthermore, requiring re-screening every 24 months will result in screening every six wet weather and four dry weather events. Re-screening at this frequency is based on wastewater monitoring. Re-screening requirements are not included in the monitoring requirements for the Ventura County Waiver for Irrigated Lands which addresses discharges similar (i.e., episodic and transient) to MS4 discharges. Please remove the requirement for the three species testing and require Permittees to propose an appropriate species. At a minimum, remove the re-screening requirements such that screening is conducted only once within the permit term.
112	Attachment E, XII.G.3.a.viii, pg. E-31	Toxicity testing of MS4 discharges is inappropriate	See above comments regarding the requirement for toxicity monitoring at the outfall. Remove Part XII.G.3.a.viii.
113	Attachment E, XII.F.2.c.i, pg. E-30	TIE trigger	The proposed TIE trigger is based on wastewater permitting and is not appropriate for MS4 monitoring. The proposed threshold of greater than 1.0 TUC should be replaced with a 50% mortality threshold consistent with the approach recommended in guidance published by USEPA for conducting TIEs (USEPA, 1996, Marine Toxicity Identification Evaluation. Phase I Guidance Document EPA/600/R-96/054), which recommends a minimum threshold of 50% mortality because the probability of completing a successful TIE decreases rapidly for samples with less than this level of toxicity. Additionally, experience in conducting TIEs in receiving waters in the region supports using a higher percent mortality trigger to provide a reasonable opportunity for a successful TIE. During TMDL monitoring in the Calleguas Creek Watershed (CCW) in 2003 and 2004, TIEs were initiated on samples exceeding the 50% threshold (the majority of which displayed 100% mortality. In that study, toxicity degraded in approximately 40% of the samples on which TIE procedures were conducted making the results inconclusive (and effectively useless in pinpointing specific toxicants). The Regional Board approved monitoring program for the CCW Toxicity TMDL utilizes a 50% threshold for TIE initiation. If a 50% threshold is an acceptable approach for a toxicity TMDL that focuses on receiving water issues as well as various types of discharges (i.e., MS4, agriculture, and wastewater) it should also be acceptable in a MS4 permit. The City is not opposed to conducting TIEs, rather, TIEs should be initiated where there is a reasonable chance of successfully identifying the pollutant(s) causing toxicity. As such, the proposed TIE trigger should be replaced with a threshold of 50% mortality.
114	Attachment E, XII.G.4., pg. E-31 XII.I, pg. E-32 XII.J, pg. E-32	TRE Requirements	It is inappropriate to place wastewater program elements such as the Toxicity Reduction Evaluation (TRE) in an MS4 permit. The MRP is focused on identifying individual constituents that are causing or contributing to receiving water impairments such that information is available to develop and implement control measures. Requiring Permittees to implement a TRE subverts the process by which they will identify and address water quality issues. Please remove all references to TREs.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
115	Attachment E, XII.G.4 Pg. E-31	Additional toxicity testing	It is unclear if this provision is requiring Permittees to conduct accelerated monitoring. If so, it is inappropriate to place wastewater program elements such as accelerated monitoring into an MS4 permit. MS4 discharges are not the same as wastewater plant effluent which represents a continuous discharge of typically consistent quality. Rather, urban runoff is episodic in nature. The current approach is appropriate for wastewater discharges but not urban runoff and they should be treated differently. The more appropriate approach for urban runoff is to identify the cause of toxicity if observed to exceed an appropriate threshold through toxicity identification evaluations (TIEs). It is not to require accelerated monitoring, particularly if toxicity is observed during a wet weather event. Please remove all references to additional/accelerated toxicity testing.
116	Attachment E, XII E-32	TRE Workplan	The MS4 permittees conduct a TIE when sediment toxicity is observed as required by Toxics TMDL (e.g. Ballona Creek Estuary). TRE has been traditionally required for toxicity of effluent of POTWs. All of the BMPs included in the implementation plans discuss the adaptive measures implemented to reduce the toxics. Subsequently TRE will be unnecessary and will be a duplicative effort when TIE is conducted. <i>Recommend to remove all provisions and requirements for TRE in this section.</i>
117	Attachment E, XIV.L&M, pg. E-39	Turnaround time on data	Data should be required for submittal with annual reports. Requiring the submittal of data between 30 and 90 days will not allow Permittees to complete appropriate QA/QC of the data and provide additional information regarding the context of the data. Please remove the short term turnaround requirements and require all data and supporting information be submitted with the annual reports.
118	Attachment E, XV, pg. E-39	Hard copy reporting requirements	As both the City and the Regional Board are working to increase e-submittals of materials please revise the submittal requirements for the annual report to be only via electronic.
119	Attachment E, XVII.A Pg. E-40	Initial watershed summary information	The permit requires the submittal of watershed summary information in the first year. However, Permittees will still be developing the requested information as part of the WMP. Rather than providing the requested information in year one as part of the annual report, it would be more efficient for Permittees that are participating in a WMP to submit the same information as part of the WMP submittal and then every odd year thereafter. Permittees that are not participating in a WMP could still be required to submit the information in year 1.
120	Attachment E, XVIII.A.2.d, Pg. E-43	This natural drainage systems comparison study has limited applicability in the city of Los Angeles.	Part XVIII.A.2.d requires the following “For natural drainage systems, develop a reference watershed flow duration curve and compare it to a flow duration curve for the subwatershed under current conditions.” This requirement is not appropriate for the City of Los Angeles, since only a very small part of the City drains into a natural drainage system and no reference subwatershed may be found since Los Angeles is substantially developed. The City of Los Angeles would accept in participating for a limited comparison study with other municipalities. However we believe this condition will be applicable for permittees that Permittees that have significant areas that drain to natural drainage systems.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
121	Attachment E Table C Machado Pesticides and PCBs TMDL E-54	Monitoring and Reporting Plan and Quality Assurance Project Plan	The TMDL BPA (page 13) states that: 1.5 years after effective date of TMDL, submit a LWQMP, MRP Plan and QAPP for approval by the Ex. Officer to comply with a MOA. If there is already a LWQMP and QAPP in place to implement the Machado Lake Nutrient TMDL, these documents may be amended to address the requirements of this TMDL. This TMDL was effective on March 2012. 1.5 year after this date which is September 2013, is when this plan is due. Therefore we request to correct the date of submission of the plan in permit from Sep. 20, 2012 to September 20, 2013 to be consistent with BPA for this TMDL.
122	Attachment E Table C Machado Pesticides and PCBs TMDL E-54	Begin Phase 1 Monitoring	This activity needs to be performed 30 days from date of Executive Officer approval of MRP and QAPP or October 20, 2013. However during that time Machado Lake will be under construction of a massive Proposition O-funded project, the Machado Lake Ecosystem Rehabilitation Project. This project is estimated to be completed on March 2016. As such monitoring can only start after completion of construction. Please consider revising the dates to reflect the schedule of this project or acknowledge that no monitoring is expected to commence.
123	Attachment E Machado Pesticides and PCBs TMDL – E-54	Phase 1 Monitoring	As described in the comment above, monitoring cannot be performed during this period (October 20, 2013 to October 20, 2015) due to the construction of the lake. Please revise the proposed schedule to reflect the construction phase of the Machado Lake Ecosystem Rehabilitation Project.
124	Attachment E Table C Echo Park Lake Nutrient TMDL E-60	Reporting	Table C requires that the annual reporting start on December 15, 2012 annually thereafter. Please note that no monitoring results will be submitted by December 2012 nor by December 2013, because Echo Park Lake is under construction for the Proposition O-funded Echo Park Lake Rehabilitation Project. The first year of water quality data will be submitted by December 15, 2014.
125	Attachment E Table C Echo Park Lake PCBs and Organochlorine Pesticide TMDL E-60 to E-61	Compliance Monitoring, Fish Tissue Monitoring, Stormwater Monitoring, Reporting	Table C requires that the compliance monitoring start on December 15, 2013 annually thereafter. Please note that Echo Park Lake is under construction for the Proposition O-funded Echo Park Lake Rehabilitation Project through the end of 2013. The first year of water quality data will be submitted by December 15, 2014.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
ATTACHMENT F: FACT SHEET			
126	Attachment F , Pg. F-100	Ballona Creek Toxics TMDL	Per last column of Table F-7, final compliance date is Jan. 11, 2021. The TMDL BPA allows 15 years after effective date of TMDL for final compliance. Attachment F, page F-82, gives an effective date of 1/11/2008 for this TMDL. It appears that adding 15 years to the effective date of 2008, will make 2023 (not 2021) the final compliance date.
ATTACHMENT G: NON-STORMWATER ACTION LEVELS AND MUNICIPAL ACTION LEVELS			
127	Attachment G	Incorrect cross-references	The tables with action levels (ALs) for brackish waters include a footnote noting that the ALs are set as the most stringent between the freshwater and salt water ALs. The footnote references tables for these ALs as H-# and H-# (H-9 and H-11 in the case of the brackish ALs in Table G-10 for the Dominguez Channel, for example). The reference to H-# tables is incorrect and should refer to the corresponding G-# tables (G-9 and G-11 for the Dominguez Channel example).
128	Attachment G I-VII Pg. G-1-13	Non-Storm Water Action Levels cannot be verified based upon the information provided	Since the Tentative Order (TO) does not include detailed derivation of the ALs, it is not possible to verify or comment on the validity of the numbers presented in Attachment G for priority pollutants. However, a situation where an AL may be incorrect has been identified in the case of mercury. The daily maximum AL for discharges to non-ocean waters is either 0.1 µg/L, or 1.0 µg/L in the tables provided for all of the watersheds. No information for this variation is provided.
129	Attachment G I-VII Pg. G-1-13	Non-Storm Water Action Levels cannot be verified based upon the information provided	The Fact Sheet does not provide detailed calculations or information on how each of the non-storm water action levels were developed and provides only one example of such derivation (for nickel in discharges to salt water). As such, the Regional Board's calculations behind each non-storm water action level cannot be verified. Given that these non-storm water action levels may trigger significant actions by Permittees, it is imperative that Permittees can verify that each non-storm water action level is appropriate and validly established.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
130	Attachment G VIII, pg. G-17-18	Municipal Action Levels are not utilized or referenced in the Order	<p>Attachment G is the only location in the Order where the concept of MALs are utilized or referenced. Therefore, it is unclear how the MALs fit into the requirements of the Order, especially within the Watershed Management Programs in Part VI.C. Attachment G notes that where MALs are exceeded, each Permittee shall submit a MAL Action Plan with the Annual Report. The requirement to submit an additional report that requires an assessment of sources and identification of BMPs would be redundant for Permittees that are developing and implementing a Watershed Management Program. In addition, the discussion in Attachment G related to MALs does not provide a nexus to receiving waters. Consistent with the comments provided for the non-storm water action levels, there should be a nexus between exceedances in the receiving water and exceedances of MALs so as not to negate the prioritization aspect of the Watershed Management Programs. Otherwise, Permittees may be required to address pollutants that do not meet the priority requirements outlined in Part VI.C for the Watershed Management Programs. The following language should be included in Attachment G, Part VIII:</p> <p><u>“Implementation of an approved Watershed Management Program per Part VI.C of the Order fulfills all requirements related to the development and implementation of the MAL Action Plan. A Permittee that is implementing an approved Watershed Management Program per Part VI.C shall not be considered in violation of this Part VIII of Attachment G.”</u></p>
ATTACHMENT H: BIORETENTION/BIOFILTRAION DESIGN CRITERIA			
131	Attachment H 2.b H-1	Placement of the underdrain	This guidance Attachment encourages the placement of the underdrain near the top of the gravel storage layer. However based on our established biofilter design, the underdrain needs to be placed near the bottom to prevent septic conditions. Since biofiltration will be used where infiltration is not allowed or soil is poorly draining, the biofilter will result in standing water if the underdrain is shifted higher and will result in degraded water quality such as high bacteria and low dissolved oxygen levels.
ATTACHMENT I: DEVELOPER TECHNICAL INFORMATION AND GUIDELINES			
132	Attachment I I-1	No context provided	There is no discussion in the Order that refers to this Attachment. Please introduce this attachment and its purpose in the requirements in Part VI.D: Stormwater Management Program Minimum Control Measures.
ATTACHMENT M: TMDL PROVISIONS FOR SANTA MONICA BAY WMA			

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
133	Attachment M A.2 M-1	Santa Monica Bay Bacteria TMDL water quality standards do not apply at the effluent discharge	The Santa Monica Bay Bacteria TMDL water quality standards do not apply at the effluent discharge (storm drains, creeks, or channels) as stated on Part A.2. Instead, the water quality limitations apply at the point zero mixing zone (runoff discharge and wave wash). The Bureau recommends that the language be changed to <i>“Permittees shall comply with the following final water quality-based limitations at the shoreline monitoring stations designated in the Santa Monica Bay Beaches Bacteria TMDL during ...”</i>
134	Attachment M A.2 M-1	Exclude Geometric Mean column	The draft permit states that compliance with the bacteria effluent limitations including Geometric Mean standard for dry weather becomes effective upon the effectiveness of the permit. The TMDL re-opener adopted on June 7, 2012 does not differentiate between dry or wet weather geometric mean. Instead, the geometric mean is calculated using both wet and dry data with compliance deadline of July 15, 2021. Please consider <i>removing from the table, the column with Geometric Mean standards.</i> See page M-6 on this Attachment for the Geometric Mean provision.
135	Attachment M A.3.b M-5	Update of annual allowable exceedances	This part includes the annual allowable exceedance days of single sample objective for three seasons. Per June 7, 2012 Board adopted re-opener, the allowable exceedance during winter dry period (November 1 to March 31) has increased to nine (9) and two(2) for shoreline monitoring stations under daily and weekly sampling frequency respectively. The table should be updated to reflect this change.
136	Attachment M A.3.c M-5	Antidegradation provision is not applicable in this case	This part tabulates a list of shoreline monitoring stations subject to antidegradation provisions. Included in the list are monitoring stations SMB 2-13, and SMB 3-08 within the jurisdictional groups 2 and 3. These locations provide stormwater runoff treatment and diversion and thus the reason for water quality improvement. Also due to unique climate patterns during which this data was collected, it does not ensure that this water quality will remain at these levels. For these reasons these locations should not be subject to antidegradation and should be removed from the table.
137	Attachment M A.3.d M-6	Geometric Mean standards become effective on July 15, 2021	Per the Board adopted re-opener for Santa Monica Bay Bacteria TMDL, there is no differentiation of wet and dry geometric mean standard. The geometric mean is calculated for all data regardless of weather condition with compliance deadline of July 15, 2021. Please consider stating that <i>“permittees shall comply with the following geometric mean receiving water limitation for all shoreline monitoring stations along Santa Monica Bay beaches no later than July 15, 2021.”</i>
138	Attachment M E.1.d,e,f M-12	Provisions to be removed	Both E.1.d & e are not part of the Ballona Creek Trash TMDL and are not included in any other of the Trash TMDLs incorporated into the permit. Also part E.1.f ignores these requirements for compliance. Please consider removing these two requirements.
139	Attachment M E.3.b.i –E.3.b.iv M-13	Inclusion of Geometric Mean standard	Compliance deadline for Geometric Mean standard for Ballona Creek is the same as Santa Monica Bay. See item 134 above. Consider removing from the tables in part i , ii ,iii, and iv, the column with Geometric mean standards.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
140	Attachment M E.3.c.i M-14	Update of annual allowable exceedances	The Winter Dry annual allowable exceedance days for single sample have increased similarly as that of Santa Monica Bay as approved in the June 7, 2012 re-opener hearing. The table should be updated to reflect this change. See comment No. 135.
141	Attachment M E.3.c.iii,iv,v M-14 to M-15	Geometric Mean standards become effective on July 15, 2021	Compliance deadline with the Geometric Mean standard for bacteria is the same of that for Santa Monica Bay. See comment No. 137, Please revise to state that “ <i>Permittees shall comply with the following geometric mean receiving water limitations for discharges to Ballona Creek Estuary; Ballona Creek Reach 2 the confluence with Ballona Creek Estuary; and Centinela Creek at the confluence with Ballona Creek Estuary no later than July 15, 2021.</i> ”. Similarly, the language for Parts iv, and v should also be modified
142	Attachment M F.1.b M-17	Exclude Geometric Mean column	Compliance deadline for Geometric Mean standard for Marina del Ray is the same as Santa Monica Bay. See item No. 137.
143	Attachment M F.c.i M-17	Update of annual allowable exceedances	The Winter Dry annual allowable exceedance days for single sample have increased similarly as that of Santa Monica Bay as approved on the June 7, 2012 re-opener hearing. The table should be updated to reflect this change. Also see comment No.135.
144	Attachment M F.c.iii M-18	Geometric Mean standards become effective on July 15, 2021	Compliance deadline with the Geometric Mean standard for bacteria is the same of that for Santa Monica Bay. See comment No. 137.
ATTACHMENT O: TMDL PROVISIONS FOR LOS ANGELES RIVER WMA			
145	Attachment O A.3 O-1 to O-3	Newly developed effluent limitations	The Trash Effluent Limitations listed were not previously identified. Also they appear to be inconsistent value from the Los Angeles River Trash TMDL’s final resolutions and the source of the data is not specified. Please provide effluent limitations to be consistent with the TMDL standards or specify source of data.
146	Attachment O C.2.d O-1 to O-3	Wet Weather definition is inconsistent with TMDL documents	Footnote #47 defines wet weather as “ <i>any day when maximum flow is equal or greater than 500 cfs measured in Wardlow gage station</i> ”. This is not consistent with Los Angeles River Bacteria TMDL definition of wet weather which is defined as “a day with rainfall of 0.1 inch or more plus the 3 days following the rain event.” Please see footnote #6, page 10 of Attachment A, Los Angeles River Bacteria TMDL and page 22 of Los Angeles River Bacteria TMDL. Please make this correction

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
147	Attachment O D.2 O-6	Effluent limitations are inconsistent with assumptions of the WLAs	<p>The WLAs in the LA River Bacteria TMDL assigned to the MS4 are expressed as allowable exceedance days. The WLAs are not expressed as concentration based effluent limitations. Discharges from the MS4 could be greater than the proposed effluent limits but concentrations in the wave wash could be lower than the numeric target. Furthermore, the TMDL allows for a certain number of exceedances of the single sample maximum, which may also allow for exceedances of the proposed effluent limitations without violating the assumptions of the WLAs. As such, the assignment of effluent limitations as concentration based limitations is not consistent with the requirements or assumptions of the WLAs and should be removed. Only receiving water limitations are appropriate given that both the TMDL target and the WLAs are expressed in the receiving waters. Additionally, this approach unnecessarily places MS4 permittees in a position to receive mandatory minimum penalties for the exceedance of effluent limits that are not consistent with assumptions of the WLAs. If the interest in providing effluent limitations is to allow discharges to differentiate from other comingled discharges, the interest can be addressed in Part E. Special Provisions by revising b.v, d.i, and e.i to include an additional mechanism for demonstrating compliance that states that a Permittee shall be deemed in compliance if there are no exceedances of applicable water quality objectives at the Permittee’s MS4 outfall(s).</p>
148	Attachment O D.3 O-6	Interim, load-based WQBELs	<p>The load-based allocations are grouped, but can be separated by jurisdiction based on drainage area, per the BPA. Footnote 48 should be revised to state that the load-based interim WQBELs can be separated into individual jurisdictions based on proportional drainage area.</p>
149	Attachment O D.5.a.1 O-12	Compliance Determination is inconsistent with the TMDL BPA	<p>The TMDL BPA (page 6) states that:</p> <p>MS4 dischargers can demonstrate compliance with the final dry weather WLAs by demonstrating that the final WLA are met instream or by demonstrating one of the following conditions at outfalls to the receiving waters:</p> <ol style="list-style-type: none"> 1. Flow-weighted concentration of <i>E. coli</i> in MS4 discharges during dry weather is less than or equal to 235 MPN/100mL, based on a weighted-average using flow rates from all measured outfalls; 2. Zero discharge during dry weather; 3. Demonstration of compliance as specified in the MS4 NPDES permit which may include the use of BMPs where the permit’s administrative record supports that the BMPs are expected to be sufficient to implement the WLA in the TMDL, the use of calculated loading rates such that loading of <i>E. coli</i> to the segment is less than or equal to a calculated loading rates that would not cause or contribute to exceedances based on a loading capacity representative of conditions in the River at the time of compliance or other appropriate method. <p>The third and final method, above, which provides both BMP based and load based methods for demonstrating compliance is not provided in the permit. The permit must be consistent with the WLAs as outlined in the BPA.</p>

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
150	Attachment O F.3.c O-15	Mass-Based allocations table for nutrients is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-18 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ⁴ Each wasteload allocation must be met at the point of discharge. A three year average will be used to evaluate compliance. However, if applicable water quality criteria for ammonia, dissolved oxygen and pH, and the chlorophyll <i>a</i> target are met in the lake, then the total phosphorous and total nitrogen allocations are considered attained. In assessing compliance with wasteload allocations, responsible jurisdictions assigned both northern and southern subwatershed allocations may combine allocations.
151	Attachment O F.3.c O-16	Wasteload allocation table for PCBs is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-28 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge.
152	Attachment O F.3.d O-16	Alternative wasteload allocation table for PCBs is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-29 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge.
153	Attachment O F.4.c O-17	Wasteload allocation table for chlordane is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-39 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge.
154	Attachment O F.4.d O-17	Alternative wasteload allocation table for Chlordane is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-40 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge. Also the TMDL document does not mention a three-year average for Total Chlordane associated with Suspended Sediment and Annual average for Total Chlordane in Water Column. Please make these corrections
155	Attachment O F.5.c O-17	Wasteload allocation table for dieldrin is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-49 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge.

Attachment B – Detailed Comment Matrix

Additional Comment #	Document Reference:	Issue	Comments
156	Attachment O F.5.d O-18	Alternative wasteload allocation table for dieldrin is inconsistent with the TMDL document	Please include the two key missing footnotes shown on Section 6, page 6-50 of the TMDL document: ¹ This input includes effluent from storm drain systems during both wet and dry weather. ³ Each wasteload allocation must be met at the point of discharge. Also the TMDL document does not mention a three-year average for Total dieldrin associated with Suspended Sediment and Annual average for Total dieldrin in Water Column. Please make these corrections

ATTACHMENT C:

Proposed Language for Tentative Order No. R4-2012-xxxx and NPDES Permit NO. CAS004001:

Suggested Findings and Provisions to Provide for the Development of an Integrated Plan

Finding

1. In recent years, USEPA has begun to embrace integrated planning approaches to municipal wastewater and stormwater management. USEPA further committed to work with states and communities to implement and utilize integrated planning approaches to municipal wastewater and stormwater management in its October 27, 2011 memorandum "*Achieving Water Quality Through Municipal Stormwater and Wastewater Plans*"¹ and in its June 5, 2012 memorandum "*Integrated Municipal Stormwater and Wastewater Planning Approach Framework*."
2. Integrated planning will assist municipalities on their critical paths to achieving the human health and water quality objectives of the Clean Water Act (CWA) by identifying efficiencies in implementing the sometimes overlapping and competing requirements that arise from distinct wastewater and stormwater programs, including how best to make capital investments. Integrated planning can also facilitate the use of sustainable and comprehensive solutions, including green infrastructure, that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes that enhance the vitality of communities. The integrated planning approach does not remove obligations to comply with the CWA, but rather recognizes the flexibilities in the CWA for the appropriate sequencing of work.
3. This Order provides the opportunity for the permittees to develop an Integrated Plan consistent with the USEPA Integrated Planning Approach Framework distributed via the June 5, 2012 memorandum¹.

Provision

[Recommended Placement: Add new provision at Part VI.C.7]

INTEGRATED PLANS

1. In lieu of a Watershed Management Program, the Permittees may alternatively elect to develop an Integrated Plan that addresses the overlapping and competing requirements that arise from their wastewater and stormwater programs. The principles of the Integrated Plan are to:
 - Maintain existing regulatory standards that protect public health and water quality.
 - Allow a municipality to balance various CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first.

2. The Integrated Plan shall:

¹ The October 27, 2011 and June 5, 2012 memoranda are available at <http://cfpub.epa.gov/npdes/integratedplans.cfm>.

- Reflect State requirements and planning efforts and incorporate State input on priority setting and other key implementation issues;
 - Provide for meeting water quality standards and other CWA obligations by utilizing existing flexibilities in the CWA and its implementing regulations, policies and guidance;
 - Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance.
 - Incorporate effective innovative technologies, approaches and practices, including green infrastructure.
 - Evaluate and address community impacts and consider disproportionate burdens resulting from current approaches as well as proposed options.
 - Ensure that existing requirements to comply with technology-based and core requirements (*e.g.*, proper operation and maintenance of facilities, secondary treatment requirements, nine minimum controls for combined sewer overflows (CSOs), including elimination of dry weather overflows, and stormwater minimum measures) are not delayed.
 - Ensure that a financial strategy is in place, including appropriate fee structures.
 - Provide appropriate opportunity for meaningful stakeholder input throughout the development of the plan.
2. The responsibility to develop an integrated plan rests with the Permittee. Development of an Integrated Plan is entirely voluntary.
3. Where a Permittee has developed an Integrated Plan, the Regional Board shall reopen this Order and consider the plan in modifying the requirements of this Order.

Information on Establishment of Bed Sediment Wasteload Allocations for the Ballona Creek and LA/LB Harbors Toxics TMDLs

The Los Angeles Regional Water Quality Control Board (Regional Board) Tentative Order No. R4-2012-XXXX presents language incorporating Total Maximum Daily Load (TMDL) requirements. The following memorandum discusses two TMDLs included in the Tentative Order:

- Ballona Creek Estuary Toxic Pollutants TMDL (BC Toxics TMDL)
- Dominguez Channel and Los Angeles/Long Beach Harbors Toxics TMDL (Harbors TMDL)

Both the BC Toxics and Harbors Toxics TMDLs assign mass-based sediment wasteload allocations (WLAs) to stormwater. The WLAs were developed to address elevated levels of pollutants in bed sediment. The loading capacities and corresponding WLAs in the TMDLs represent the mass of pollutants associated with the sediments *that settle on the bottom of the waterbodies*, which is a subset of what is discharged. The Tentative Order assign MS4 effluent limitations set equal to the TMDL WLAs and includes language indicating the WLAs apply to sediment-bound pollutants that settle in the estuary. However, additional clarity based on the allowable discharge would be helpful to develop implementation plans and evaluate compliance utilizing suspended sediment data.

The following discusses approaches to provide additional information in the Tentative Order to support incorporation of allowable *discharged* loads into the Permit.

Ballona Creek Toxics TMDL

The BC Toxics TMDL includes targets and allocations in sediments for cadmium, copper, lead, silver, zinc, chlordane, DDT, Total PCBs and Total PAHs. As discussed in the BC Toxics TMDL Staff Report, the mass-based allocations are based on the sediments *deposited in the estuary* rather than what is discharged to the watershed. Detailed information regarding parameters for sediment deposition is provided on page 33 of the BC Toxics TMDL, based on data from 1991 – 2001. As described on page 36 of the Staff Report, pollutant specific loading capacity was calculated by multiplying the average annual deposition of fine sediments (5,004 m³/year) by the numeric targets for sediments. The TMDL assumes a bulk sediment density of 1.42 metric tons per cubic meter (mt/ m³).

Table 1 uses the information in the TMDL to generate MS4 WLAs expressed as sediment discharged, using the following steps:

- The loading capacity (Column 3) is calculated based on the amount of sediment *discharged* (Column 1) as presented in the TMDL times the TMDL target (Column 2). Note that loading this was calculated using the bulk sediment density of 1.42 mt/ m³.

- The MS4 WLAs (Column 5) based on total discharged sediment calculated using the same approach as the TMDL (loading capacity multiplied by the percent MS4 area in the watershed = 91.4% [Column 4]).

The approach presented in **Table 1** is consistent with a number of toxics TMDLs in the Region (Colorado Lagoon Toxics TMDL, Marina del Rey Toxics TMDL, and the Santa Monica Bay Toxics TMDL).

Table 1. Proposed MS4 Allowable Loadings based on Ballona Creek Toxics TMDL Loading Capacities Calculated Using Total Discharged Sediment

	(1)	(2)	(3)	(4)	(5)
Metals	Sediment Discharged (mt/year)¹	TMDL Target (mg/kg)	Loading Capacity Based on Total Discharged Sediment (kg/yr)	Percent MS4 area in the watershed	MS4 WLAs Based on Total Discharged Sediment (kg/yr)
Cadmium		1.2	76.0		69.5
Copper		34	2,154		1,969
Lead	63,350	46.7	2,959	91.4%	2,704
Silver		1	63.4		57.9
Zinc		150	9,503		8,686
Organics	Sediment Discharged (mt/year)¹	TMDL Target (ug/kg)	Loading Capacity Based on Total Discharged Sediment (g/yr)	Percent MS4 area in the watershed	MS4 WLAs Based on Total Discharged Sediment (g/yr)
Total DDT		22.7	100		91.5
Total PCB	63,350	4022	1,438	91.4%	1,314
Total PAH		0.5	254,807		232,894
Chlordane		1.58	31.7		29.0

LA/Long Beach Harbors Toxics TMDL

The Harbors Toxics TMDL includes targets and allocations in sediments for copper, lead, zinc, total PAHs, total DDT, and total PCBs. Similar to the BC Toxics TMDL, the mass-based allocations are based on the sediments *deposited* rather than what is discharged to the watershed. Section 6 of the TMDL Staff Report (TMDLs and Allocations, pg 91) states (emphasis added):

The loading capacity of the contaminated sediments within each waterbody was calculated from multiplying the sediment quality target by the **average annual sediment deposition rate** (Equation 3; See also Appendix III, Part 1).

TMDL = total sediment deposition rate x SQV or BSAF

where sediment deposition rate = average annual mass of sediment deposited per waterbody

As the information was not presented in the TMDL documents, USEPA's modeling contractor (Tetra Tech) provided the LSPC total sediment loadings discharged into the waterbodies on an annual basis. **Table 2** presents the loading capacity calculated as the product of the total sediment discharged into a waterbody and the TMDL target. **Table 3** then presents suggested

allowable loading for LA County MS4 permittees based on the product of the loading capacity (Table 2) by the percent LA County MS4 area draining each waterbody.

Table 2. Total Annual Loading Capacity Based on Discharged Sediments

Waterbody Name	Total Sediment Discharged into Waterbody (kg/yr) ¹	Total Annual Loading Capacity based on Sediment Discharged					
		Cu (kg/year)	Pb (kg/year)	Zn (kg/year)	PAH (kg/year)	DDT (g/year)	PCB (g/year)
Dominguez Channel Estuary	2,470,201	207.3	284.7	914.5	24.52	9.63	21.95
Consolidated Slip	355,560	0.97	1.33	4.27	0.11	0.05	0.10
Inner Harbor - POLA	1,580,809	37.02	50.84	163.3	4.38	1.72	3.92
Inner Harbor - POLB	674,604						
Outer Harbor - POLA	572,349	4.53	6.22	19.99	0.54	0.21	0.48
Outer Harbor - POLB	1,828,407						
Fish Harbor	30,593	0.30	0.41	1.32	0.04	0.01	0.03
Cabrillo Marina	38,859	0.61	0.84	2.69	0.07	0.03	0.06
San Pedro Bay	19,056,271	6.73	9.25	29.70	0.80	0.31	0.71
Los Angeles River Estuary	21,610,283	2,488	3,418	10,977	294.3	115.6	263.5
Cabrillo Beach	27,089	0.5	0.7	2.4	0.1	0.03	0.06

1 – 2002-2005 LSPC modeled average annual sediment load from adjacent watersheds utilized in the EFDC model to calculate loading capacity based on settled sediment.

Table 3. Proposed Los Angeles County MS4s Allowable Loadings based on TMDL Loading Capacities Calculated Using Total Discharged Sediment

Waterbody Name	Percent of Land Area	Allowable Loading for LA County MS4 Dischargers					
		Cu (kg/year)	Pb (kg/year)	Zn (kg/year)	PAH (kg/year)	DDT (g/year)	PCB (g/year)
Dominguez Channel Estuary	95.8%	198.6	272.4	874.9	23.45	9.23	20.94
Consolidated Slip	98.4%	0.95	1.31	4.20	0.11	0.04	0.10
Inner Harbor - POLA	77.4%	28.67	39.33	126.4	3.39	1.33	3.04
Inner Harbor - POLB							
Outer Harbor - POLA	59.0%	2.67	3.67	11.80	0.32	0.12	0.28
Outer Harbor - POLB							
Fish Harbor	99.7%	0.30	0.41	1.31	0.04	0.01	0.03
Cabrillo Marina	99.0%	0.60	0.83	2.66	0.07	0.03	0.06
San Pedro Bay	12.0%	0.81	1.11	3.57	0.10	0.04	0.09
Los Angeles River Estuary	8.5%	211.0	290.1	932.3	24.99	9.79	22.39
Cabrillo Beach	100%	NA	NA	NA	NA	0.03	0.06
		Cu (mg/kg)	Pb (mg/kg)	Zn (mg/kg)	PAH (mg/kg)	DDT (ug/kg)	PCB (ug/kg)
Los Angeles River Estuary Dischargers ¹	NA	34	46.7	150	4022	1.58	3.2

1 – The Los Angeles River Estuary Dischargers, which includes all discharges that do not directly discharge into the estuary, were assigned sediment quality value (SQV) based allocations. SQVs are currently set at the more protective of ERLs or fish tissue associated sediment targets.

From: Charlie Yu <charlie.yu@lacity.org>
To: Rebecca Christmann <rchristmann@waterboards.ca.gov>
CC: "Renee A. Purdy" <rpurdy@waterboards.ca.gov>, Nicholas-J Martorano <njmartorano@waterboards.ca.gov>, Donna Toy Chen <donna.chen@lacity.org>, Chris Minton <ChrisM@lwa.com>
Date: 7/3/2012 3:06 PM
Subject: Information on BC/LA Harbor Toxics TMDL WLAs - 06-13-12.doc
Attachments: DRAFT - Information on Toxics WLAs - 06-13-12-memo.doc

Hi Rebecca,

The attached memo was developed and revised as a follow up to the conversation we had with you last time about the BC Toxics and Harbors Toxics WLA. It discussed approaches to provide additional information in the Tentative Order to support incorporation of allowable *discharged*loads into the Permit.

Please contact me if you have any questions.

Thanks,

--

Charlie Yu
(213)485-3929



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE:

WM-9

July 23, 2012

Mr. Samuel Unger, P.E., Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr. Ivar Ridgeway

Dear Mr. Unger:

COUNTY OF LOS ANGELES – COMMENTS ON DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGES

On behalf of the County of Los Angeles (County), thank you for the opportunity to comment on the proposed draft National Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System (MS4) Permit (Draft Permit) released on June 6, 2012. Enclosed are our comments for your review and consideration and to be included in the Administrative Record.

The County has implemented many programs to improve stormwater and urban runoff quality in compliance with current MS4 Permit. These will continue to be implemented under the new MS4 Permit. The County is committed to improving the health of our water bodies. Our goal is to seek a permit that will allow permittees the flexibility to work together and focus their efforts on identified pollutants so that available resources are used most effectively. To that end, we submit the enclosed comments to the Draft Permit.

Mr. Samuel Unger
July 23, 2012
Page 2

Since the start of the permit renewal process in May 2011, staff of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), has expressed a willingness to work with stakeholders. However, permittees were not advised of the full scope of the proposed permit terms until the issuance of the full draft, and then were given only 45 days to comment. It is our strong belief that the 45-day public comment period does not provide sufficient time to conduct a thorough review of a highly complex permit over 500 pages long. Many crucial issues in the Draft Permit remain unresolved. The key issue, as explained in detail in the enclosed comments, is that the Draft Permit contains receiving water limitations language that essentially renders compliance impossible. The Regional Board cannot legally adopt a permit that permittees cannot comply with.

We believe that given sufficient time, this issue as well as most, if not all, issues can be resolved, avoiding the need to address them at the hearing. To address this and other critical issues in the Draft Permit, the County would like the opportunity to work with staff to develop creative solutions to address concerns of all stakeholders, including Regional Board members and the environmental community.

We also urge the Regional Board to postpone adoption of the Draft Permit in light of the case pending in front of the U.S. Supreme Court, *County v. Natural Resources Defense Council*. We expect that the U.S. Supreme Court will hear oral arguments in this matter in early December 2012. As the Regional Board is aware, the ruling in the case could clarify the scope of this permit. The Regional Board should not be adopting a new permit while there is uncertainty over it. There is no pending need for the Regional Board to act precipitously prior to the U.S. Supreme Court's hearing, which is only 90 to 120 days from the currently scheduled date for the consideration of the permit.

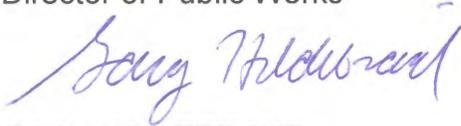
For these reasons, we request that the Regional Board extend the current public comment period by 90 days to allow the parties to fully comment on the Draft Permit's provisions. We further request that, after the first period of public comment, the Regional Board issue a second Draft Permit and reopen public comment on that second Draft Permit for 60 days. This will allow the permittees and the public to be advised of the Regional Board staff's position with respect to the initial comments made and to respond to any proposed revisions in light of those initial comments. It will also allow the parties additional time to work with staff in an attempt to resolve the outstanding issues that currently exist.

Mr. Samuel Unger
July 23, 2012
Page 3

If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works



GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

RW:jtz

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
1	Request for Extension of Time in Which to Submit Comments and to Continue the Hearing		<p>The County requests that the current public comment period be extended by 90 days to allow the parties to fully comment on the draft Permit's provisions. We further request that, after that period of public comment, the Regional Board issue a second draft, tentative Permit and reopen public comment on that second draft Permit for 60 days. The hearing on the Permit can occur 30 to 60 days after comments are submitted on the second draft, or at another time as the Regional Board finds appropriate.</p> <p>This request is made because the 45 day period that has been currently given to the Permittees has been inadequate. This request is also made because the Regional Board should not conduct a hearing on a new permit while a case that could directly impact the scope of the new Permit, <i>Los Angeles County Flood Control District v. Natural Resources Defense Council</i>, is pending before the United States Supreme Court.</p> <p>First, the current 45 day period that has been provided for comments on the draft Permit is grossly inadequate, such that it amounts to a violation of due process. The draft Permit and its accompanying documents are over 500 pages long. The draft Permit is highly complex, requiring extensive analysis of the obligations it imposes. The proposed Permit will impose significant costs on the Permittees, costs which must be fully analyzed and considered. Although Regional Board staff held some workshops on permit proposal, the County had no knowledge of the Permit's definitive terms until it was issued on June 6, 2012, and its issuance was the first time a complete permit, rather than merely proposed portions subject to revision, was issued to the Permittees and the public.</p> <p>As a public agency with a responsibility to protect the public fiscal resources, the County must fully consider all aspects of the draft Permit and consult with many different departments before providing a full response. The 45 day period does not provide sufficient time for the County to do so. It also does not allow the County to adequately prepare and submit its evidence on the duties and costs proposed under the Permit.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
1 (cont.)	Request for Extension of Time in Which to Submit Comments and to Continue the Hearing		<p>Second, there is currently pending in the United States Supreme Court the case of <i>Los Angeles County Flood Control District v. Natural Resources Defense Council</i>. We expect that the Supreme Court will hear oral arguments in this matter in early December 2012. As the Regional Board is aware, the ruling in the case could clarify the reach of the Permit. The Regional Board should not be adopting a new permit while there is a cloud over hanging it. There is no pending need for the Board to act precipitously prior to the Supreme Court's hearing which is only 90 to 120 days from the currently scheduled date for the consideration of the Permit.</p> <p>For these reasons, we request that the Regional Board extend the current public comment period by an additional 90 days, issue of a second draft permit for public comment, and hold the hearing on the draft Permit be held 30 to 60 days after close of the comments on the second tentative draft, or at another time as the Regional Board finds appropriate.</p>
2	Incorporation of Previous Comments		To the extent that they have not been incorporated, the County of Los Angeles reiterates and incorporates by reference our comments submitted on February 9, 2012, April 12, 2012, April 18, 2012, and May 12, 2012 (Exhibits A through D).
3	LA County MS4		<p>Throughout the draft Permit, including the findings and the fact sheet, the draft Permit refers to the "L.A. County MS4." This reference is both confusing and inaccurate. The County understands that, by referring to the "L.A. County MS4," the intent is to refer to the LACFCD and the other Permittees' MS4s as a whole. The reference, however, is confusing because the County of Los Angeles itself is a Permittee, and the reference to the "L.A. County MS4" could be taken as referring to the County's MS4, as opposed to all of the Permittees' MS4's.</p> <p><u>Recommendation</u> The County requests that all references to "L.A. County MS4" be replaced in the more accurate reference of "MS4s subject to this Order." The County further requests that all references to the "L.A. County MS4 Permit" should be replaced with a reference to the "permit for the MS4s."</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

General Comments			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
4	Violation of Water Code §13360		<p>The draft Permit violates Water Code §13360. Water Code §13360(a) provides in pertinent part:</p> <p style="padding-left: 40px;">No waste discharge requirement or other order of a Regional Board or the State Board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.</p> <p>The draft Permit consists of 123 pages of detailed, prescriptive requirements. It contains 19 attachments, including a detailed monitoring and reporting program; bioretention/biofiltration design criteria; developer technical information and guidelines; and TMDL provisions for seven watershed areas. The detailed, prescriptive requirements of the draft Permit violate Water Code §13360.</p> <p><u>Recommendation</u> Delete all specified activities and all provisions of the draft Permit that specify the design, location, type of construction, or particular manner required to comply with obligations of the draft Permit. Alternatively, include a provision that states, “No Permittee is required to comply with any provision of this Order that specifies the design, location, type of construction, or particular manner required to comply with the obligations of this Order, which are included as suggestions only.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part I. Facility Information			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
5	Contact Information for County of Los Angeles	Table 2 [Page 8]	<p>The contact person for the County of Los Angeles is not correct.</p> <p><u>Recommendation</u> Revise to: Gary Hildebrand, Assistant Deputy Director 626-458-4300 ghildeb@dpw.lacounty.gov</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
6	Natural Sources	II.A. [Page 13]	<p>It should be clearly stated that it is not the intent of this Permit to address naturally occurring pollutants, which are outside the control of the Permittees. Other MS4 Permits, such as Order No. R8-2009-0030 (NPDES No. CAS 618030) already includes such language.</p> <p><u>Recommendation</u> Include as a finding the following: “This Order is intended to regulate the discharge of pollutants in urban storm water runoff from anthropogenic (generated from human activities) sources and/or activities within the jurisdiction and control of the Permittees and is not intended to address background or naturally occurring pollutants or flows.”</p>
7	Permit Scope	II.E. [Page 16]	<p>This finding recites that “[n]on-storm water discharges through an MS4 are prohibited” This is legally incorrect. Clean Water Act Section 402(p)(3)(B)(ii) requires MS4 Permittees to include requirements in their permits to “effectively prohibit non-stormwater discharges into the storm sewers.” 33 U.S.C. § 1342(p)(3)(B)(ii) (emphasis supplied).</p> <p>Moreover, as will be discussed in greater depth with respect to Part III of the draft Permit, the origination point, and responsible Permittee, for the non-stormwater discharge <i>into</i> the MS4 is most often very different than the discharge point, which may be operated by another Permittee. Thus, this finding raises both legal and practical issues requiring correction.</p> <p><u>Recommendation</u> Change the first two sentences of the final paragraph of this Finding as follows:</p> <p>Non-storm water discharges consist of all discharges <u>to the MS4</u> that do not originate from precipitation events. Non-storm water discharges <u>to an MS4 must be effectively prohibited...</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
8	Geographic Coverage and WMAs	II.F. [Pages 17-18]	<p>This finding includes a statement regarding “[f]ederal, state, regional or local entities” outside the area of the Los Angeles County Flood Control District and not named as Permittees under the draft Permit may operate MS4 facilities and/or discharge to the MS4 and water bodies covered by this Order.</p> <p>The County is concerned about such discharges, but disagree with the Finding, which suggests that it is the responsibility of the Permittees, who do not have primary jurisdiction over such dischargers, to address these discharges through “necessary legal authority to control the contribution of pollutants to its MS” and to include a “comprehensive planning process that includes intergovernmental coordination, where necessary.”</p> <p>Unlike the current Permit, Order No. 01-182, which in Finding D.2 acknowledges both uncontrolled entities within the Permit coverage area and outside the area, this finding only references sources located outside the area of the LACFCD. In fact, there are dischargers within the area of the LACFCD, such as schools, universities, federal facilities and other dischargers which are beyond the control of the Permittees. These facilities are, of course, subject to the jurisdiction of the Regional Water Board. This finding should be modified to reflect sources both within and without the Permit coverage area, as was done in Finding D.2 of Order 01-182.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
8 (cont.)	Geographic Coverage and WMAs	II.F. [Pages 17-18]	<p><u>Recommendation</u> The language of this finding should reflect the concerns outlined above. The fourth paragraph of Part II.F should be revised as follows:</p> <p style="padding-left: 40px;">Federal, state, regional or local entities <u>within a Permittee’s boundaries or outside of the Permittee’s in-jurisdictions outside the Los Angeles County Flood Control District, and not currently named as Permittees in this Order, may operate MS4 facilities and/or discharge to the MS4 and waterbodies covered by this Order. The Permittees may lack legal jurisdiction over these entities under state or federal constitutions. These entities are subject to the Regional Water Board’s own authority, either under the Phase II Stormwater Permit or generally under the Porter-Cologne Water Quality Act. Given the Regional Water Board’s authority over these entities, the Regional Water Board is responsible for taking the lead in assuring that pollutants are controlled from these entity’s discharges in a manner consistent with the requirements of this Order including, without limitation, such steps as are necessary to ensure that discharges from such entities or to the MS4s owned or operated by the Permittees do not cause or contribute to violations of Parts III, IV and V of this Order. Pursuant to 40 CFR sections 122.26(d)(1)(ii) and 122.26(d)(2)(iv), each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary.</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
9	MS4 Requirements	II.H. [Page 19]	<p>The last paragraph of this finding states: “This Order implements the federal Phase I NPDES Storm Water Program requirements. These requirements include three fundamental elements: (i) a requirement to effectively prohibit non-storm water discharges through the MS4, (ii) requirements to implement controls to reduce the discharge of pollutants to the maximum extent practicable, and (iii) other provisions that the Regional Water Board determines necessary for the control of pollutants in MS4 discharges in order to achieve water quality standards.”</p> <p>This paragraph misstates the requirements of the Clean Water Act. The Act, in 33 U.S.C. § 1342(p)(3)(B)(ii) and (iii) requires only that MS4 permits must “include a requirement to effectively prohibit non-stormwater discharges into the storm sewers” and “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods, and such other provisions as the Administrator or the state determines appropriate for the control of such pollutants.”</p> <p>There is no provision in the Act that requires the Regional Water Board to include “other provisions that the Regional Water Board determines necessary for the control of pollutants in MS4 discharges in order to achieve water quality standards.” As the Ninth Circuit held in <i>Defenders of Wildlife v. Browner</i>, 191 F.3d 1159, 1165-66, the last clause of 33 U.S.C. § 1342(p)(3)(B)(iii) gives the state the “discretion” to require stormwater discharges to achieve water quality standards, but also the discretion not to require such controls.</p> <p><u>Recommendation</u> Revise the final paragraph of Part II.H as follows:</p> <p>This Order implements the federal Phase I NPDES Storm Water Program requirements. These requirements include <u>two</u> fundamental elements: (i) a requirement to effectively prohibit non-storm water discharges <u>to</u> through the MS4, <u>and</u> (ii) requirements to implement controls to reduce the discharge of pollutants to the maximum extent practicable.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
10	TMDLs	II.J.1. [Page 20-23]	<p>In this Finding, it is stated that the draft Permit must incorporate requirements “that are consistent with and implement WLAs that are assigned to discharges” from the MS4. The Finding further states that “[t]his Order requires Permittees to comply with the TMDL Provisions in Part VI.E. and Attachments L through R, which are consistent with the assumptions and requirements of the TMDL WLAs assigned to discharges from the Los Angeles County MS4.”</p> <p>With respect to MS4 permits, however, it is not required that TMDLs be incorporated “consistent with the assumptions and requirements” of the TMDL WLAs. An NPDES permit is required to comply with 40 C.F.R. § 122.44(d)(1)(vii)(B) (which is cited in the finding) only “when applicable.” See 40 C.F.R § 122.44, which states, prior to any substantive provisions, that NPDES permits should contain the requirements set forth in that section “when applicable.” Subparagraph 122.44(d)(1)(vii)(B) is a subsection of subparagraph 122.44(d)(1). Subparagraph 122.44(d)(1) is captioned “Water quality standards and State requirements” and, consistent with that caption, sets forth requirements “necessary to: (1) achieve water quality standards”</p> <p>Pursuant to 33 U.S.C. § 1342(p)(3), however, municipal stormwater permits are not required to mandate compliance with water quality standards. The entirety of 40 C.F.R. § 122.44(d)(1), including § 122.44(d)(1)(vii)(B), is thus not applicable. This result is derived from the plain language of 33 U.S.C. § 1342(p)(3) as well as by the holding in <i>Defenders of Wildlife, supra</i>.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
10 (cont.)	TMDLs	II.J.1. [Page 20-23]	<p>33 U.S.C. § 1342(p)(3) provides in pertinent part:</p> <p>(A) Industrial discharges Permits for discharges associated with industrial activity shall meet all applicable provisions of this section <i>and Section 1311 of this title</i>.</p> <p>(B) Municipal discharge Permits for discharges from municipal storm sewers – . . . (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable (Emphasis added.)</p> <p>The Clean Water Act, in 33 U.S.C. § 1311(b)(1)(C), requires that not later than July 1, 1977, NPDES permits must include effluent limitations necessary to meet water quality standards. This provision explicitly is not applicable to municipal stormwater permits. Instead as the Ninth Circuit held in <i>Defenders</i>, “§ 1342(p)(3)(B)(iii) replaces the requirements of § 1311 with the requirement that municipal storm-sewer dischargers ‘reduce the discharge of pollutants to the maximum extent practicable’ In the circumstances, the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).” 191 F.3d at 1165 (emphasis in original).</p> <p>Thus, because MS4 permits are not required to contain provisions obligating MS4 permittees to meet water quality standards, the portions of 40 C.F.R. § 122.44 that address compliance with those standards do not apply. This includes 40 C.F.R. § 122.44(d)(1)(vii)(B). <i>See also</i> Letter dated January 28, 2011 to USEPA Administrator Lisa Jackson and Peter Silva, Assistant Administrator of USEPA, Office of Water, which is attached (Exhibit E – NACWA 1-28-11 Municipal Letter to EPA) in the Exhibits accompanying these comments and which analyzes these points at length.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
10 (cont.)	TMDLs	II.J.1. [Page 20-23]	<p><u>Recommendation</u> This finding, the provisions of Part VI.E. and the attachments relating to TMDLs, should be revised to delete reference to the authority of 40 C.F.R. § 122.44(d)(1)(vii)(B) or any statement that TMDLs must be incorporated into the draft Permit consistent with the assumptions and requirements of the TMDLs. Such TMDLs should be reflected through BMPs.</p>
11	Total Maximum Daily Loads	II.J.1. [Pages 20-23]	<p>The County is concerned that final WLAs for State-adopted TMDLs have been incorporated as numeric effluent limitations that apply at the point of discharge from the MS4 and, where applicable, as receiving water limitations. The more appropriate approach is to incorporate interim and final WLAs as BMP-based effluent limitations defined as TMDL Control Measures required in the Watershed Management Program.</p> <p><u>Recommendation</u> Refer to the attached file titled “Exhibit F – LACMS4 Redlined TMDL Excerpts 20Jul2012Rev” for language in the Findings section that addresses this concern.</p>
12	Unfunded Mandates	II.Q. [Page 24]	<p>This Finding (and the Fact Sheet) assert that the draft Permit does not constitute a state mandate subject to Article XIII B, Section 6 of the California Constitution. Draft Permit, p. 24.</p> <p>The Regional Water Board has no jurisdiction to make this finding for the purposes of article XIII B, section 6. The California Legislature has specifically charged the Commission on State Mandates with the task of determining whether a mandate is a state or federal mandate and whether a local agency or school district is entitled to a subvention of funds pursuant to the California Constitution. <i>The Commission has exclusive jurisdiction to make that determination.</i> Govt. Code § 17552. Conversely, the Regional Water Board has no jurisdiction to make that determination. As such, any such finding or determination in this Permit is entitled to no deference and carries no weight. <i>Larson v. State Personnel Board</i> (1994) 28 Cal.App.4th 265, 273-274 (decisions of agency are not entitled to deference where agency acts in excess of its jurisdiction); <i>Department of Park & Recreation v. State Personnel Board</i> (1991) 233 Cal.App.3d 813, 824 (same).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
12 (cont.)	Unfunded Mandates	II.Q. [Page 24]	<p>The Fact Sheet also contains several erroneous statements with respect to this issue. First, it states that the requirements of this order do not constitute a new program or higher level of service. That statement is factually incorrect. The draft Permit contains many new obligations and requirements that were not previously imposed on the Permittees, including incorporation of a number of TMDLs into the Permit. These requirements are new programs or higher levels of service.</p> <p>Second, as stated above, the Regional Water Board does not have legal jurisdiction to determine whether the mandates included in the draft Permit are federal, as opposed to state, mandates. As noted, any findings on that issue are entitled to no weight. However, where the draft Permit directs the Permittees to undertake a specific program in order to implement the MEP standard, as opposed to allowing the Permittees to design their own program, this directive constitutes a state mandate. <i>See Long Beach Unified School District v. State of California</i> (1990) 225 Cal.App.3d 155, 172-73.</p> <p>Third, the Fact Sheet states that the Permittee’s obligations under the draft Permit are similar to and in many respects less stringent than the obligations on non-governmental dischargers. There is no evidence to support this finding which is factually incorrect. The obligations under the draft Permit are not similar to obligations imposed on non-governmental dischargers. These obligations, including but not limited to the obligation to inspect for illicit connections and discharges, to inspect commercial, industrial and construction sites, to reduce wasteload pollutant loads in compliance with TMDLs, to impose minimum BMPs for roadway paving and repairs and to implement regional watershed management programs, monitoring, and other requirements are obligations that are not imposed on non-governmental dischargers.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part II. Findings			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
12 (cont.)	Unfunded Mandates	II.Q. [Page 24]	<p>Fourth, the Fact Sheet states that the Permittees have requested the draft Permit. Permittees have not requested this Permit; they are obligated under federal law to apply for it. Finally, contrary to the Fact Sheet, there is no evidence or cited legal authority to support the contention that Permittees can assess fees to pay for all of the obligations imposed by the draft Permit. In fact, the fee authority of the Permittees is extremely limited, and more so in the wake of the recent passage of Proposition 26.</p> <p><u>Recommendation</u> Delete Finding II.Q.</p>
13	Economic Considerations	II.R. [Pages 24-25]	<p>This finding asserts that “the Regional Water Board finds that the requirements in this Permit are not more stringent than the minimum federal requirements.” There is no factual support for this assertion, which appears intended to bolster the argument that the draft Permit’s requirements do not represent a state mandate. The County submits that there are numerous requirements that exceed “the minimum federal requirements.” Additionally, as noted in comments in response to Finding II.H, there is no Clean Water Act “requirement” to “include other provisions that the Regional Water Board has determined appropriate to control such pollutants” Such “other provisions” may be included in an MS4 permit, but they are placed there at the complete discretion of the Regional Water Board, not as a result of any requirement in the Act. <i>Defenders of Wildlife, supra</i>, 191 F.3d at 1166.</p> <p><u>Recommendation</u> Delete that portion of Finding II.R beginning, “As noted in the preceding finding” and ending, “are mandated by federal law.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
14	Non-Storm Water Discharge Prohibition into the MS4	III.A.1. [Page 26]	<p>The Permit requires that: “Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters except where such discharges are either . . .”</p> <p>This language goes beyond the requirements of the Clean Water Act, which only requires that permits “effectively prohibit” non-stormwater discharges “into the storm sewers.” It does not require the prohibition of discharges of such non-storm waters to receiving waters.</p> <p>Moreover, the Permittee that has the authority and ability to effectively prohibit discharges TO the MS4 will often be different from the Permittee controlling the MS4 at the point where it discharges into receiving waters. The MS4 begins in the street, which is most often within a city, and often ends at the outfall to the receiving water, an outfall which may be part of the MS4 operated by another city or by the LACFCD. While the language of the Permit appropriately limits responsibility to that “portion of the MS4” for which it is owner or operator, there remains ambiguity as to the responsibility for such discharges.</p> <p><u>Recommendation</u> Revise as follows: “Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, <u>effectively</u> prohibit non-storm water discharges <u>into</u> through the MS4 to receiving waters except where such discharges are either:...”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
15	Prohibitions of Non-Storm Water Discharges – Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Discharges	III.A.1.b & Attachment F – IV.A.5 [Page 26 & Pages F-25 – F-26]	<p>As proposed, all discharges authorized by the USEPA under CERCLA, including well development and redevelopment of extraction wells, which normally require coverage under General NPDES Permit No. CAG994004 – Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties would be exempt. CERCLA discharges may fall under CAG914004 – Discharges of Treated Groundwater from Investigation and/or Cleanup of Volatile Organic Compounds Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties, or CA834001 – Waste Discharge Requirements for Treated Groundwater and Other Wastewaters from Investigation and/or Cleanup of Petroleum Fuel-Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties. There should be no exception for CERCLA discharges to comply with permit requirements that other dischargers must follow. MS4 Permittees do not have such waivers when compliance is not practicable; other dischargers should be held to the same standards.</p> <p>In addition, although discharges are required to comply with applicable water quality standards, the requirement can be waived if compliance is not practicable. The Permit also waives prior notification for unplanned discharges, and only requires notification within 24 hours after the unplanned discharge has occurred. Such waivers can have significant impacts to MS4 Permittees as they are held liable for discharges to their MS4. Lack of notification prior to an unplanned discharge can also impact operations and system capacity, as well as endanger field staff and contractors working in its storm drains and channels.</p> <p><u>Recommendation</u> Require CERCLA dischargers to seek coverage under the appropriate NPDES Permit and comply with all requirements. In addition, dischargers must notify MS4 Permittees prior to unplanned discharges, and comply with any requirements issued by the MS4 Permittee.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
16	Conditional Exemptions from Non-Storm Water Discharge Prohibition – Potable Water Sources	III.A.2.a.ii. [Page 28]	<p>As proposed, Permittees are required to work with potable water suppliers that may discharge to the Permittee’s MS4 to “ensure” notification, monitoring and recordkeeping. The Permittees cannot “ensure” that a third party, such as a potable water supplier, will undertake the required notice, monitoring and recordkeeping. It is appropriate for the Permittees to require such steps as a condition for entry of the discharge into their MS4.</p> <p>In addition, recordkeeping by the potable water supplier would only be required for discharges greater than one acre-foot (325,581 gallons). In previous discussions the proposed threshold was in the range of 25,000 to 30,000 gallons for potable water suppliers and/or distributors.</p> <p><u>Recommendation</u> Revise as follows: “Additionally, each Permittee shall work with potable water suppliers that may discharge to the Permittee’s MS4 to <u>require</u>ensure: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern⁹ in the potable water supply release; and (3) record keeping by the potable water supplier for all discharges greater than <u>30,000 gallons</u> one acre foot.”</p>
17	Conditional Exemptions – ASBS and non-ASBS	III.A.2.b. & III.A.3.a [Pages 28-29]	<p>The list of conditionally exempted non-storm water discharges within the ASBS (Part III.A.3.a.) includes categories not exempted under the non-ASBS section (Part III.A.2.b.). For example, hillside dewatering, naturally occurring ground water seepage via an MS4, and non-anthropogenic flows from a naturally occurring stream via a culvert or MS4 are conditionally exempt within the ASBS, but is not listed in the non-ASBS section. Exemption of these categories are essential for structural and slope stability, and should apply in areas not designated as ASBS. The list of exemptions should be consistent for both.</p> <p><u>Recommendation</u> Add “hillside dewatering,” naturally occurring ground water seepage via an MS4, and Non-anthropogenic flows from a naturally occurring stream via a culvert or MS4.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
18	Permittee Requirements for Prohibitions of Non-Storm Water Discharges	III.A.4.a.i.-vi. [Pages 29-30]	<p>As proposed, MS4 Permittees must develop and implement procedures to ensure that dischargers not named in the MS4 Permit provide advanced notification to the Permittee of its non-stormwater discharge, obtain local permits, conduct appropriate monitoring, implement additional BMPs or control measures (Table 8), and maintain records of its discharges as a condition of discharges into the Permittee’s MS4.</p> <p>A Permittee cannot ensure that a third party discharger follow requirements relating to its discharge. Such a requirement would potentially make the Permittee liable for any failure of the third party discharger to follow the requirements set forth in the draft Permit.</p> <p>In addition, the language can be interpreted more broadly than Regional Water Board staff may have intended. While a footnote to this provision names such parties as POTW operators, potable water supply and distribution agencies and other governmental entities, it presumably could apply to any private company or individual as well. While this provision appears to shift to the discharger responsibility for controlling its discharge, the Permittee will incur administrative costs. Also, is this requirement applicable to discharges such as irrigation runoff, car washing, and other occasional, but repetitive activities conducted by non-institutional dischargers?</p> <p><u>Recommendations</u> Revise as follows: “a. Develop and implement procedures to ensure that <u>for</u> a discharger, if not a named Permittee in this Order, <u>to</u> fulfills the following for non-storm water discharges to the Permittee’s MS4:...”</p> <p>In addition, clarify that this provision only applies to significant institutional discharges.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
19	Monitoring and Data Evaluation of Discharges Authorized Under Other NPDES Permits	III.A.4.c. [Page 30]	<p>As proposed, MS4 Permittees are responsible for evaluating monitoring data from the Non-Storm Water Outfall-Based Monitoring Program to determine whether any authorized categories of non-storm water discharges, including those authorized under another NPDES Permit, are a source of pollutants that causes or contributes to an exceedance of applicable Receiving Water Limitations (RWLs) or Water Quality Based Effluent Limitations (WQBELs). If monitoring data show exceedances of applicable WQBELs or action levels, the Permittee must take further actions to determine whether the discharge is causing or contributing to exceedances of RWLs.</p> <p>If the Permittees determine that authorized discharges contribute to a significant portion of non-storm water discharges that may have caused or contributed to an exceedance, the Permittee(s) should not be required to take further actions to determine whether the authorized discharges are a source of pollutants that causes or contributes to an exceedance of receiving water limitations. This places the burden to regulate NPDES-authorized discharges on the MS4 Permittees when such responsibilities lie with the Regional Water Board to evaluate the discharges they permit. Instead, the Permittee(s) should be allowed to focus resources on investigating the unauthorized discharges, and report the authorized discharges to the Regional Water Board for further evaluation and action.</p> <p><u>Recommendation</u> Remove the requirement to <u>take further actions from on authorized or permitted (under other individual or general NPDES permits) discharges-permitted under other NPDES Permits that may have caused or contributed to an exceedance of WQBELs or RWLs.</u> This responsibility should lie with the Regional Water Board.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
20	Conditional Exempt Non-Storm Water Discharge – Causing or Contributing to Exceedance	III.A.4.d. [Pages 30- 31]	<p>If a conditionally exempt non-storm water discharge listed in Part III.A.2.b is a source of pollutants that causes or contributes to an exceedance of applicable standards, the MS4 Permittee(s) must report it in its annual report, and take one of four actions: “effectively prohibit” the discharge (defined to not allow the discharge to the MS4 until the discharger obtains coverage under a separate NPDES permit), impose conditions in addition to those in Table 8, provide for diversion of the discharge to the sanitary sewer or provide treatment of the discharge prior to discharge of the receiving water.</p> <p>Since “effectively prohibit” requires the discharger to either stop the discharge (which may be difficult given the circumstances of the discharge) or obtain an NPDES permit, it makes more sense for the discharger to apply directly to the Regional Water Board for coverage under the NPDES permit, as this places the responsibility on the discharger to ensure that it is complying with the Clean Water Act.</p> <p>The ultimate responsibility for non-stormwater discharges is that of the discharger, not the Permittee. The Permittee must, under the Clean Water Act, “effectively prohibit” non-allowed non-stormwater discharges, but the Permittee is not responsible for arranging treatment or diversion to sanitary sewers. Obviously, a discharger can contract with a sanitary sewer to handle the discharge, but that is a responsibility for the discharger, not the Permittee. Source control and source remediation should always be the preferred action to encourage and instill change in polluting behaviors.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
20 (cont.)	Conditional Exempt Non-Storm Water Discharge – Causing or Contributing to Exceedance	III.A.4.d. [Pages 30- 31]	<p><u>Recommendation</u> Revise as follows:</p> <p>d. If the Permittee determines that any of the conditionally exempt non-storm water discharges identified in Part III.A.2.b above is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, the Permittee(s) shall report its findings to the Regional Water Board in its annual report. Based on this determination, the <u>Regional Water Board Permittee(s)</u> shall also either:</p> <p>i. Require Effectively prohibit⁴⁸ the non-storm water discharge to obtain an NPDES permit to the MS4; or</p> <p>ii. Impose conditions <u>on the dischargers</u>, in addition to those in Table 8, subject to approval by the Regional Water Board Executive Officer, on the non-storm water discharge such that it will not be a source of pollutants; or</p> <p>iii. Provide for diversion of the non-storm water discharge to the sanitary sewer; or</p> <p>iv. Provide treatment of the non-storm water discharge prior to discharge to the MS4 or receiving water.</p>
21	Prohibition of Conditionally Exempt Non-Storm Water Discharge	III.A.4.f. [Pages 31]	<p>See Comment No. 20 above. The discharger should apply directly to the Regional Water Board for coverage under the NPDES permit, as this places the responsibility on the discharger to ensure that it is complying with the Clean Water Act.</p> <p><u>Recommendation</u> Delete this provision.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
22	Regulatory Relief Through Source Specific Water Quality Monitoring	III.A.5. [Page 31]	<p>Liability for receiving water limitation violations should not follow for any exceedance of a water quality standard. Nevertheless, we support the intent of this provision, which is to acknowledge that Permittees should not be liable for exceeding receiving water limitations and/or water quality-based effluent limitations due to authorized or conditionally exempt non-stormwater discharges.</p> <p>We believe, however, that the provision as written would be difficult to utilize and contains ambiguous language.</p> <p>First, NPDES Permittees (the “authorized discharges”) may not be required to monitor their discharges and in any event, would send monitoring reports to the RWQCB, not Permittees. Also, coordinating sampling taken at the point of discharge and in the receiving water would very extremely difficult, especially if the discharge point is some distance from the point of entry into the MS4. Also, “natural flows” are not monitored. Therefore, we recommend that for the “authorized discharges,” there be no requirement for source specific monitoring data.</p> <p>Second, there is no definition as to what constitutes “other relevant information regarding the specific non-storm water discharge as identified in Table 8.” The requirements of Table 8 apply to dischargers, not the Permittees.</p> <p>Third, none of these non-stormwater discharges should lead to liability for the Permittees unless there is a failure by Permittees to comply with the requirements of the Permit for that discharge category. Thus, if the Permittee fails to require certain BMPs or monitoring, it cannot benefit from the “safe harbor.”</p> <p>It is possible that multiple discharges could occur concurrently that could cumulatively cause or contribute to an exceedance. Permittees are also concerned about the extensive and widespread monitoring that may be required to provide that burden of proof.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
22 (cont.)	Regulatory Relief Through Source Specific Water Quality Monitoring	III.A.5. [Page 31]	<p><u>Recommendation</u> Revise as follows: 5. If a Permittee demonstrates that the water quality characteristics of a specific authorized (as identified in Part III.A.1.(a)(-d)) or conditionally exempt (as identified in Part III.A.2.) essential non-storm water discharge resulted in an exceedance of applicable receiving water limitations and/or water quality based effluent limitations during a specific sampling event, the Permittee shall not be found in violation of applicable receiving water limitations and/or water quality-based effluent limitations for that specific sampling event. Such a demonstration must be based on source specific water quality monitoring data from the authorized or conditionally exempt essential non-storm water discharge and other relevant information regarding the specific non-storm water discharge as identified in Table 8. In the case of conditionally exempt non-storm water discharges, the Permittee shall only be required to show that it imposed all conditions on the specific discharge as required in this Part III.</p>
23	All Discharge Categories – Segregation of Flows, Notification	Table 8, Attachment F – IV.A.5. [Page 33, Page F-26]	<p>As written, the Permit would require segregation of conditionally exempted discharges from potential sources of pollutants. Since the MS4 can receive flows from multiple discharges and sources, segregating the conditionally exempt flows may not be feasible.</p> <p>Most residential swimming pools hold from 20,000 to 22,000 gallons of water, and decorative fountains even less. Is the one-acre foot threshold intended to exempt residential swimming pools and most decorative fountains from advanced notification? This notification would only apply to lakes dewatering and municipal/county/commercial swimming pools that are approximately half the size of an Olympic-sized swimming pool (approximately 660,000 gallons). Notification should be set at 30,000 gallons.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
23 (cont.)	All Discharge Categories – Segregation of Flows, Notification	Table 8, Attachment F – IV.A.5. [Page 33, Page F-26]	<p><u>Recommendation</u> Revise as follows: When logistically and economically feasible, sSegregate conditionally exempt non-storm water discharges from potential sources of pollutants to prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Whenever there is a discharge of one acre-foot <u>30,000 gallons</u> or more into the MS4, the <u>MS4 Permittee Los Angeles County Flood Control District</u> shall require advance notification by the discharger to the <u>all</u> potentially affected MS4 Permittees, including at a minimum the District and the Permittee with jurisdiction over the land area from which the discharge originates. <u>The threshold may be decreased accordingly based on any low flow diversion structures downstream of the point of discharge.</u></p>
24	Table 8 – Conditions and BMPs – Prescriptive and Resource Intensive	Table 8, Attachment F – IV.A.5. [Pages 33-36, Page F-27 ~ F-28]	<p>First, the use of the word “ensure” in the conditions/BMPs should be deleted, since the requirement is being asked of a third-party discharger, not the Permittee. A Permittee cannot “ensure” the conduct of a third-party discharger. The provision should use the term “require” instead.</p> <p>Second, the Permit would add tremendous burden on MS4 Permittees to address exempt non-storm water discharges which are generally perceived to be low risk. Specifically, Section III.A.2.b combined with Table 8 would require Permittees to develop and implement procedures to ensure discharges meet very prescriptive and often highly resource intensive BMPs. For the dewatering of lakes, swimming pools/spas, and decorative fountains, the requirement to inspect and clean the MS4 inlet and MS4 outlet to the receiving water immediately prior to discharge raises significant practical problems. The owner/operator of the outlet often is different from the owner/operator of the inlet or the initial MS4 (such as the street), and thus not aware of the discharge. The MS4 outlet may also not be easily identifiable by the discharger or the initial MS4 owner/operator. This requirement is logistically infeasible, impractical, highly resource-intensive, and expensive. Moreover, since the outlet (which is discharging water from numerous sources) is constantly discharging, there should not be a need to clean it out.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
24 (cont.)	Table 8 – Conditions and BMPs – Prescriptive and Resource Intensive	Table 8, Attachment F – IV.A.5 [Pages 33-36, Page F-27 ~ F-28]	<p><u>Recommendation</u> Revise as follows: Require Ensure procedures for advanced notification by the lake owner/operator to the Permittee(s) no less than 72 hours prior to the planned discharge. Immediately prior to discharge, visible trash on the shoreline or on the surface of the lake shall be removed and disposed of in a legal manner. Immediately prior to discharge, the discharge pathway, <u>leading to the MS4</u> the MS4 inlet to which the discharge is directed, and the MS4 outlet from with the water will be discharged to the receiving water, shall be inspected and cleaned out <u>by the discharger</u>. Discharges shall be volumetrically and velocity controlled by the discharger to minimize resuspension of sediments. The discharger shall take measures to stabilize lake bottom sediments. Require Ensure procedures for water quality monitoring for pollutants of concern in the lake. Require Ensure record-keeping of lake dewatering by the lake owner/operator.</p>
25	Table 8 – Landscape Irrigation Using Potable Water	Table 8 [Page 34]	<p>As noted above, irrigation water discharges are subject to the requirements of an ordinance adopted pursuant to AB 1881. Moreover, it is unclear how individual dischargers (who most often will be individual residents) can implement BMPs to minimize runoff or implement water conservation programs. Such programs also are the responsibility of the water purveyor, not the MS4 operators.</p> <p><u>Recommendation</u> Revise as follows: General Conditions</p> <p>Discharge allowed if runoff due to potable landscape irrigation is minimized through the <u>adoption and implementation of an ordinance specifying water efficient standards, as well as an outreach and education program focusing on water conservation and landscape water use efficiency adopted pursuant to AB 1881.</u></p> <p>Conditions/BMPs - delete</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part III. Discharge Prohibitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
26	Non-Commercial Car Washing by Residents or Non-Profit Organizations	Table 9 [Page 36]	We have concern about the enforceability of any BMPs applicable to residents or non-profit organizations, which may be high school clubs or athletic teams. Most of these activities occur during the weekend, when municipal staff are not working. It would be very costly to attempt any enforcement during non-working hours.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27	The Receiving Water Limitations Section Must be Revised	V.A. [Pages 37-38]	<p>The Receiving Water Limitation section of the draft Permit is both unlawful and unwise. The draft:</p> <ul style="list-style-type: none"> • turns upside down prioritization of efforts to reduce stormwater pollution under the Permit by emphasizing those pollutants of less significance over those of greater significance; • fails to include provisions that would incentivize Permittees to coordinate their efforts under this section with the TMDLs as well as other goals of the Permit; • is an abuse of discretion because it is impossible to comply with; and • creates inordinate liability for Permittees due to third party lawsuits. <p>All of these deficiencies can be remedied, and this section of the Permit improved, by making this section consistent with the approach to TMDLs set forth in Part VI.E.</p> <p>According to the draft Fact Sheet issued in support of the draft Permit, a Permittee can be found in violation of Parts 1 and 2 of the receiving water limitations, even though the Permittees are complying in good faith with the iterative process set forth in Part 3. In contrast, where there are exceedances of pollutants addressed by TMDLs, a Permittee is not considered to be in violation of the Permit if it is in compliance with an approved watershed management program. The combination of these two parts of the Permit results in the Permit turning upside down the prioritization of efforts to address pollutants in stormwater.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>As a result of the draft Permit's approach to receiving water limitations, a Permittee must give priority to those pollutants whose exceedances cause a violation of the receiving water limitation section. Otherwise the Permittee would be in violation of the Permit. Those exceedances, however, are exceedances which the Regional Water Board has considered to be of lesser priority as not warranting the preparation of a TMDL as of this time.</p> <p>On the other hand, it is the pollutants which are the subject of the TMDL that have been found to be of greater significance. Accordingly, it is to those pollutants to which the parties' efforts should be most directed. The approach set forth in the receiving water limitation section, however, turns this prioritization upside down.</p> <p>To remedy this circumstance, the draft Permit should provide that pollutants not covered by TMDLs but whose presence violates receiving water limitations should be addressed by the Permittees in conjunction with their watershed management program when one is being developed or exists, and compliance with that watershed management program is compliance with receiving water limitations. By doing so, Permittees can incorporate and prioritize their efforts to address exceedances of non TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p> <p>Second, the receiving water limitation section fails to provide any incentive for innovative programs that might address exceedances of receiving water limitations. The County recommends that an incentive be included to develop new, innovative approaches, particularly those that will result in greater infiltration of stormwater before it reaches the MS4. Accordingly, we propose that a paragraph be added to the receiving water limitation section that would provide that a Permittee can be deemed in compliance if it is developing projects that will result in greater infiltration of stormwater in the watersheds where the water limitations are being exceeded.</p> <p>Third, the receiving water limitations section, as drafted, is unlawful and an abuse of discretion. The section, as written, is impossible to comply with.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>It is well recognized that stormwater is variable and that municipal stormwater Permittees do not have control over stormwater flows. As a result, it is difficult, and at times impossible, to engineer solutions or adopt programs to fully address the pollutants in stormwater. The State Water Board’s Blue Ribbon Panel (see Exhibit G - State Water Board Blue Ribbon Panel Final Report) found in 2006, “it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges.” In response to public comment dated April 27, 2012, regarding the draft tentative order for the renewal of the MS4 Permit for the California Department of Transportation, State Water Board staff cited this finding of the Blue Ribbon Panel and endorsed it.</p> <p>The current draft of the receiving water limitations, however, does not recognize the finding by the State Water Board’s Blue Ribbon Panel and there is no evidence in the fact sheet that supports a finding that the Permittees can comply with this section. On the contrary, our analysis of available outfall monitoring data supports the Blue Ribbon Panel’s conclusion. Because storm drain outfall monitoring has not been conducted in Los Angeles County in the past, we conducted an analysis of available outfall monitoring data from urbanized areas similar to Los Angeles County. The purpose of the analysis was to compare real outfall monitoring results from urban areas with applicable Water Quality Standards. The results, summarized in Exhibit H Outfall Data Summary, show that storm drain discharges can and do exceed Water Quality Standards. For example, discharges exceeded the e. Coli and other bacterial Water Quality Objectives 50 to 100 percent of the time. Unless a water body has an established bacterial TMDL – and there are currently no bacterial TMDLs for Dominguez Channel and San Gabriel River – it is not possible for Permittees to comply with the receiving water limitations.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	<p>Finally, the receiving water limitations language, as drafted, creates inordinate legal liability for Permittees due to third-party law suits. In the past, Regional Water Board staff has said that they would exercise prosecutorial discretion with respect to enforcement, but those statements provide no comfort to Permittees. Exhibit I - Stockton Summary 2012-07-20 is a technical memorandum that discusses how a Permittee subject to similar language, the City of Stockton, was subject to a lawsuit even though it was in full compliance with the iterative process.</p> <p>As discussed above, the Permit recognizes this issue with respect to those pollutants addressed by TMDLs. There is no reason why a different standard should apply to the pollutants not addressed by TMDLs.</p> <p><u>Recommendation</u> Part V should include the following paragraph:</p> <p style="padding-left: 40px;">In lieu of preparing an integrated monitoring compliance report set forth in Part V.A.3.a. a Permittee may address discharges from the MS4 that cause or contribute to a violation of receiving water limitations in their watershed management program applicable to the receiving water. The Permittee shall not be considered to be in violation of Part V.A. of this Order if it is in compliance with that watershed management program.</p> <p>Part V should also add the following:</p> <p style="padding-left: 40px;">If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts 1 and 2 above, unless it fails to implement the requirements provided in Parts 3 and 4 as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part V. Receiving Water Limitations			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
27 (cont.)	The Receiving Water Limitations Section Must be Revised	V.A. [pages 37-38]	Alternatively, the County is supportive of the proposed CASQA Receiving Water Limitation language in Exhibit J – CASQA proposal - Receiving Water Limitation Provision to Stormwater NPDES Permits.
28	Definition of Receiving Water Limitations	Page A-8 (Definitions)	<p>The definition of receiving water limitation includes any applicable numeric or narrative water quality objective or <i>criterion</i> contained in the “water quality control plan for the Los Angeles Region (Basin Plan), water quality control plans <i>or policies</i> adopted by the State Water Board, or federal regulations, including but not limited to 40 C.F.R. § 131.38.” Draft Permit, p. A-8 (emphasis added).</p> <p>The reference to “policies” adopted by the State Water Resources Control Board is ambiguous. The State Board adopts water quality objectives and water quality control plans, not policy resolutions. See Water Code § 13170. It is not clear what is meant by policies.</p> <p>Additionally, the definition should not reference “criterion” under federal regulations. Permittees are not required to comply with federal water criteria. A Permittee is only required to comply with water quality standards adopted by the state or federal government that are applicable to the particular waterbody. In referring to “criterion” that might be under federal regulations, the definition could be construed as referring to criteria with which Permittees are not required to comply. It creates ambiguity in the definition.</p> <p><u>Recommendation</u> The reference to “policies” adopted by the State Board and “criterion” should be deleted from the definition of receiving water limitation.</p>
29	Notification for Exceedances	V.3.a. Footnote 23 [Page 37]	<p>30 days does not provide sufficient time to do the data analysis and determination.</p> <p><u>Recommendation</u> For footnote 23, revise to read: “Within 30<u>90</u> days of receipt of analytical results from the sampling date.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
30	Legal Authority	VI.A.2.a. [Page 38]	<p>This provision states that each Permittee must establish and maintain adequate legal authority to “control pollutant discharges . . . from its MS4” The federal stormwater regulations do not require that Permittees have adequate legal authority to control discharges from an MS4 (see 40 CFR § 122.26(d)(2)) but instead focus on the Permittee’s legal authority to control pollutant discharges to the MS4. This is appropriate, as the Clean Water Act requires the effective prohibition of non-authorized non-stormwater discharges to the MS4, and all of the subparts of 40 CFR § 122.26(d)(2)(A-F) similarly and exclusively require legal authority to address discharges to the MS4.</p> <p><u>Recommendation</u> Revise to read: “Each Permittee must establish and maintain adequate legal authority, within its respective jurisdiction, to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize or enable the Permittee to: “</p>
31	Discharges from Industrial and Construction Activity	VI.A.2.a.i. [Page 39]	<p>This provision appears to require Permittees to enforce industrial and construction sites with coverage under an NPDES permit. The Regional Water Board is the agency charged with enforcing such permits. The federal regulations require only that a Permittee “[c]ontrol through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity.” 40 CFR § 122.26(d)(2)(i)(A). Thus, references to the control of stormwater discharges from construction sites are inapplicable, though such discharges may be required to be controlled under other provisions, such as those prohibiting illicit discharges. The reference to grading ordinances should be removed, as this specification of the method of compliance violates Water Code § 13360.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
31 (cont.)	Discharges from Industrial and Construction Activity	VI.A.2.a.i. [Page 39]	<p><u>Recommendation</u> The following language is requested:</p> <p>i. Control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction sites and control the quality of storm water discharged from industrial and construction sites. <u>Permittees are not required to enforce the requirements of any NPDES permit covering an industrial and construction site. This requirement applies both to industrial and construction sites with coverage under an NPDES permit, as well as to those sites that do not have coverage under an NPDES permit. Grading ordinances must be updated and enforced as necessary to comply with this Order;</u></p>
32	Prohibit Non-storm water discharges	VI.A.2.a.ii. [Page 39]	<p>The County suggests one clarifying change in this provision, to clarify the intent of the Clean Water Act and the regulations relating to discharges to the MS4:</p> <p><u>Recommendation</u> Revise to read: Prohibit all non-storm water discharges <u>to its MS4</u> not otherwise authorized or conditionally exempt pursuant to Part III.A.</p>
33	Interagency Agreements	VI.A.2.viii. [Page 39]	<p>This provision requires control and contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements between non-Permittees. The regulations require legal authority for agreements between co-Permittees, but not between non-Permittees.</p> <p><u>Recommendation</u> This provision should be deleted.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
34	Determine Compliance and Noncompliance	VI.A.2.a.ix. [Page 39]	<p>This provisions requires inspections, etc. to determine “compliance and noncompliance with . . . the provisions of this Order, including the prohibition of non-storm water discharges into . . . receiving waters.” The federal stormwater regulations, by contrast, require that Permittees have legal authority to carry out inspections to determine compliance with permit conditions, “including the prohibition on illicit discharges to the municipal separate storm sewer.” 40 CFR § 122.26(d)(2)(i)(F). As noted above, there is no requirement in the Clean Water Act or the regulations for the control of discharges into “receiving waters,” but rather discharges into the municipal storm sewer. Alternative language is suggested below:</p> <p><u>Recommendation</u> In the first sentence of VI.A.2.ix., delete “and receiving waters” at the end of the sentence.</p>
35	Fiscal Resources	VI.A.3.a. [Page 40]	<p>This provision requires each Permittee to “exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order.” The federal stormwater regulations do not require this provision, but only that a “fiscal analysis” be conducted of the necessary capital and operation and maintenance expenditures” necessary to comply permit programs. While each Permittee is required to meet the requirements of the Permit, and thus is responsible for finding adequate funding, the Permit should not include this extra provision, which is not authorized by the Clean Water Act or the regulations and which moreover infringes on the authority of municipal governments to prepare budgets.</p> <p><u>Recommendation</u> This provision should be deleted, and the remaining subsections renumbered.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
36	Responsibilities of the Permittees	VI.A.4.a. [Page 40]	<p>Subsection (ii) requires a Permittee to “coordinate” among departments and agencies to facilitate the implementation of the order “an efficient and cost-effective manner.” This provision is proscriptive as well as vague and is in violation of Water Code § 13360. Obviously, a Permittee would presumably wish to comply with the Permit in an “efficient and cost-effective manner,” but that standard is vague and ambiguous and should not be a source of separate liability imposed by the Regional Water Board or a citizens’ suit plaintiff. Moreover, there is no support for this requirement in the Clean Water Act or the implementing regulations.</p> <p>There similarly is no support in the Act or regulations for the requirements of subsection (iii), which relates to intra-agency and inter-agency cooperation requirements. Obviously, Permittees will need to cooperate with regard to many of the provisions of the draft Permit and will need to coordinate with internal agencies or departments to ensure that the municipality or entity is aware of Permit requirements. These common sense steps should not be a separate requirement of the Permit, however. Such a requirement also is in violation of Water Code § 13360 as specifying a method of compliance.</p> <p><u>Recommendation</u> We request subsections (ii) and (iii) be deleted.</p>
37	Public Review	VI.A.5.a. [Page 41]	<p>This provision recites that documents submitted to the Regional Water Board in compliance with the Order “shall be made available to members of the public” pursuant to either the Freedom of Information Act or the California Public Records Act. It is not clear why this requirement is in the Permit, as the Regional Water Board, as the custodian of the document, will have responsibility to comply with these statutes, not the Permittees. Since these statutes in any event are applicable to public documents, this provision is unnecessary and should be deleted.</p> <p><u>Recommendation</u> We request VI.A.5.a. be deleted and the remaining subsection be renumbered.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
38	Reopener and Modification	VI.A.7.a. [Page 41]	<p>This provision, relating to the modification, revocation, reissuance or termination of the Order must include a reference to the requirements of California law, including the Water Code and the Administrative Procedure Act. Requested language is as follows:</p> <p><u>Recommendation</u> Amend the first sentence to read: This Order may be modified, revoked, reissued, or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62 and 125.64, <u>as well as in accordance with provisions of California law, including the requirements of the Water Code and the Administrative Procedure Act, Chapter 4.5 of Part 1 of Division 3 of the Government Code.</u></p>
39	Incorporation of Provisions of USEPA Guidance	VI.A.7.A.vi. [Page 42]	<p>This provision would authorize modification, etc. of the Permit to incorporate provisions of “USEPA guidance concerning regulated activities.” This is not appropriate; as such “legislative guidance” (which would include any guidance so prescriptive that it would require changes in an existing permit) has no regulatory significance unless incorporated through formal rulemaking. <i>Natural Resources Defense Council v. EPA</i>, 643 F.3d 311, 320-21 (D.C. Cir. 2011).</p> <p><u>Recommendation</u> Delete “USEPA guidance concerning regulated activities” from this provision.</p>
40	Minor Modifications	VI.A.7.d. [Page 42]	<p>This provision relating to minor modifications under 40 CFR § 122.63 provides that minor modifications may only correct typographical errors or require more frequent monitoring or reporting by a Permittee. This regulation, however, allows for an additional modification, the changing of an interim compliance date. We therefore request the following modified language:</p> <p><u>Recommendation</u> iii. <u>Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.A. Standard Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
41	Toxic Wastes and other Pollutionable Materials	VI.A.11. & 12. [Page 43]	<p>These provisions require, respectively, that the discharge of waste resulting from the combustion of toxic or hazardous wastes to the waters of the United States is prohibited and that oil and other “pollutionable materials” shall not be stored or deposited in areas where they may be carried off the “property” and/or “discharged to surface waters.” Neither of these provisions is relevant to the Permit, which regulates the property only of the Permittees. The provisions of Part VI.C of the Permit relating to public agency activities adequately cover the releases noted in Parts VI.A.11 and VI.A.12. Moreover, these provisions are vague and ambiguous, and do not address discharges to the MS4, which is the Clean Water Act requirement applicable to the Permittees.</p> <p><u>Recommendation</u> Delete Parts VI.A.11 and VI.A.12.</p>
42	Enforcement for Trash TMDLs	VI.A.14.h. [Page 45]	<p>This section discusses the enforcement of water quality based effluent limitations for trash TMDLs, but is not consistent with the language included in the adopted trash TMDLs, which allows for installation of full capture devices as a compliance method.</p> <p><u>Recommendation</u> For consistency, include or at minimum, reference, language describing the various compliance methods per the approved trash TMDLs.</p> <p>Add the following new subparagraph iii.: <u>“iii. Subparagraphs i. ii. do not apply to Permittees who have installed approved, full capture systems throughout their jurisdictional area covered by the Trash TMDLs.”</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
43	General	General	As previously commented, Receiving Water Limitations have been repeatedly described as targets for which Minimum Control Measures and other BMPs should be designed. However, receiving water quality is the result of many other concurrent discharges besides MS4s, including nonpoint and instream sources. Receiving water limitations should not be considered as effluent targets.
44	Adaptive Management Process for Watershed Management	VI.C. [Pages 45-56]	<p>Related to our Comment No. 27 for Part V Receiving Water Limitations, the draft Permit needs to be revised to address pollutants not covered by TMDLs but whose presence violates receiving water limitations. Such exceedances should be addressed by Permittees in conjunction with their watershed management program or jurisdictional storm water management program, and compliance with that program should equate compliance with receiving water limitations. This allows Permittees to incorporate and prioritize their efforts to address exceedances of non-TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p> <p><u>Recommendation</u> Add the following to the end of Part VI.C.1.b.: “and to address discharges that cause or contribute to receiving water limitations exceedances not covered under a TMDL.</p>
45	Definition of Terms	VI.C.1.d. [Page 46]	<p>As previously commented, the staff tentative order has not provided definitions for Numeric Action Levels. There are various terms used throughout the documents that are unclear or vague and need to be clearly defined.</p> <p><u>Recommendation</u> Include definitions for terms used throughout the Permit. Specifically, include definitions for "Numeric Action Levels."</p>
46	General	VI.C.1.d. [Page 46]	<p><u>Recommendation</u> As previously commented, revise to read: "The goal of the Watershed Management Programs is to ensure that discharges from the Los Angeles County Permittees' MS4..."</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
47	Non-stormwater Discharges from the MS4 into Receiving Water	VI.C.1.f.i. [Page 46] VI.C.3.a.iii (1) [Page 48]	As previously commented, the tentative order refers to "non-stormwater discharges from the MS4 to receiving waters..." <u>Recommendation</u> Remove "from the MS4 into receiving waters" throughout the document.
48	Watershed Management Program Process	VI.C.2.a. [Page 46-47]	While implementing the Watershed Management Program places Permittees in compliance with certain permit requirements, it is not clear if Permittees will be in compliance during the development phase. Furthermore, more clarity is needed on whether or not Permittees will continue existing programs during the development phase. <u>Recommendation</u> Add language that states prior to notifying the Regional Water Board of its intent to develop a Watershed Management Program, Permittees shall be in compliance by continuing existing programs and implementation programs. Additionally, after providing notification, Permittees shall be in compliance with the permit during the development of the Watershed Management Program until approval is received from the Regional Water Board. Upon approval, Permittees shall be in compliance with pertinent requirements by implementing the Watershed Management Program.
49	Timelines for Implementation	VI.C.2.a.i. [Pages 46-47]	As previously commented, the staff tentative order provides one year for Permittees to submit a draft Watershed Management Program Plan. The preparation of a plan will require extensive research, data collection and monitoring. Such an integrated monitoring effort must be given sufficient time (at least a year to develop and initiate) in order to provide the necessary water quality information for the preparation of a draft WMP Plan that includes a Reasonable Assurance Analysis.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
49 (cont.)	Timelines for Implementation	VI.C.2.a.i. [Pages 46-47]	<p>In addition, coordination amongst many Permittees to develop such a plan on a watershed basis will require agreements and memorandums of understanding to determine each Permittee's responsibilities and financial contributions. Such agreements and MOUs will require at least 6 months to a year to prepare and adopt.</p> <p><u>Recommendation</u> Synchronize the preparation of the draft WMP Plan with the integrated monitoring plan. Provide sufficient time for data/information gathering and analyses to prepare the draft WMP Plan. Recommend 2 years after Permit adoption date.</p>
50	Due Date for Implementation of WMP	VI.C.2.a.i. [Pages 46-47]	<p>As previously commented, the proposed due date for start of implementation of the Watershed Management Program as listed in Table 9 is not consistent with the narrative in VI.C.4.</p> <p><u>Recommendation</u> Revise Table 9 to state that the due date for beginning implementation of the WMP is "Upon submit <u>approval</u> of final plan <u>by the Regional Water Board Executive Officer</u>".</p> <p>In addition, add an item to the table that provides a deadline for when the Regional Water Board will approve the implementation plan.</p>
51	Source Assessment and Control Measures	VI.C.3.a. & b. [Pages 47-50]	<p>As previously commented, the staff tentative order requires identification of potential sources of pollutants categorized as Highest and High Priority, or pollutants covered under a TMDL, and pollutants on the State 303(d) Listing. Furthermore, Permittees must prioritize these issues and propose/implement control measures to address them.</p> <p>The TMDL program is designed to allow for prioritization of pollutants and impairments, and to provide timelines to address these pollutants. Requiring Permittees to also address 303(d) listing pollutants outside of a TMDL process forces Permittees to further spread their already scarce resources. The focus should be on TMDL pollutants.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
51 (cont.)	Source Assessment and Control Measures	VI.C.3.a. & b. [Pages 47-50]	<p><u>Recommendation</u> Focus the WMP efforts on TMDL pollutants (Category 1), and designate State (303(d)) Listing pollutants (Category 2) optional for source assessment, selection and implementation of control measures, etc.</p> <p>Or, as an incentive for Permittees to address non-Category 1 pollutants, the draft Permit should provide that a Permittee will not be considered in violation of the receiving water limitations for a water body-pollutant combination not covered under a TMDL if that water body-pollutant combination is being addressed by an approved, expanded watershed management program.</p>
52	Adaptive Management Process	VI.C.6.a. & b. [Pages 55-56]	<p>As previously commented, the tentative order requires Permittees to base their adaptive management process on several factors. Clarity should be added to indicate Permittees must consider the factors, but it is not a requirement to include all of them.</p> <p><u>Recommendation</u> Revise to read: "Permittees in each Watershed Management Area shall implement an adaptive management process, at least twice during the permit term, adapting the Watershed Management Program to become more effective, based on, but not limited to by considering the following:</p>
53	Evaluation of Watershed Management Program	VI.C.6.a.i. [Page 54] & Attachment F [Page F-44]	<p>With respect to implementing the iterative process to adapt the Watershed Management Program to become more effective, there are conflicting timelines in Fact Sheet (Page F-44) and Watershed Management Section (Page 54). While the Fact Sheet states the iterative process must be implemented at least twice during the permit term, the Watershed Management Section language states it should be done on an annual basis starting in 2015. The schedule requirements for the adaptive management process should be consistent throughout the Permit.</p> <p>The County is concerned about the significant amount of resources required to complete the adaptive management process on an annual basis. Consistent with the language used in the Fact Sheet, the iterative process should be implemented at least twice during the permit term.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.C. Watershed Management Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
53 (cont.)	Evaluation of Watershed Management Program	VI.C.6.a.i. [Page 54] & Attachment F [Page F-44]	<u>Recommendation</u> Revise both the implementation timeline (Table 9 on Page 47) and adaptive management language (VI.C.6.a.i.) to state the iterative process shall be performed at least twice during the Permit term.
54	Receiving Water Limitations Exceedances Addressed by the Adaptive Management Process	VI.C.6.a.ii.(1) & 6.b.ii.(1) [Pages 55 & 56]	Related to our Comment No. 27 for Part V. Receiving Water Limitations, we recommend the following as a remedy to address pollutants not covered by TMDLs but whose presence violates receiving water limitations. Such exceedances should be addressed by Permittees in conjunction with their watershed management program or jurisdictional storm water management program, and compliance with that program should equate compliance with receiving water limitations. This allows Permittees to incorporate and prioritize their efforts to address exceedances of non-TMDL pollutants with their efforts to address pollutants addressed by TMDLs. <u>Recommendation</u> Add "The Permittee shall not be considered in violation of a Receiving Water Limitation (Part V.A.) or a Water Quality Based Effluent Limitation if it is implementing the adaptive management process."
55	Reasonable Assurance	Attachment A	<u>Recommendation</u> Provide a definition for Reasonable Assurance in Attachment A that clearly states its criteria and legal justification.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D. Storm Water Management Program Minimum Control Measures			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
56	General Requirements	VI.D.1.a. [Page 56]	<p>This section states that each Permittee may implement customized actions within each general category of control measures as set forth in an approved Watershed Management Program. The deadline to submit a draft Watershed Management Program Plan is one year after the effective date of the Permit and the final Plan is due 3 months after receipt of the Regional Water Board’s comments. That means that it could easily take 1½ years or more for Permittees to have an approved Watershed Management Program. It is not clear if the Permittees are expected to implement all of the minimum control measures in the draft tentative order until their customized actions are approved.</p> <p><u>Recommendation</u> For those Permittees that have indicated their intent to customize their minimum control measures through a Watershed Management Program, allow them to continue implementing the Stormwater Quality Management Program requirements per the current (2001) Permit.</p>
57	Timelines for Implementation	VI.D.1.b.i. [Page 56]	<p>This section states that unless otherwise noted, each Permittee shall ensure implementation of requirements contained in Part VI.D within 30 days after the effective date of the Order. Most of the requirements in the section do not have a separate time schedule noted and would need to be implemented within 30 days of the effective date. While immediate implementation is feasible for such requirements that exist in the current (2001) Permit, it is not feasible to implement most new requirements, such as the Integrated Pest Management Program. Such new requirements should be allotted more time to develop and implement within 30 days.</p> <p><u>Recommendation</u> Clarify the language such that the 30 day timeline only applies to carryover requirements from the current (2001) Permit and development of new requirements are to begin within 30 days of the effective date.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.4. Public Information and Participation Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
58	General	VI.D.4.a.i. [Page 58]	<p>This section requires that a PIPP must be implemented “that includes, <i>but is not limited to</i>, the requirements listed in this part.” (emphasis supplied.) This is problematic language, because it purports to state that a PIPP must include unspecified additional requirements that could be found wanting by the RWQCB or a court.</p> <p><u>Recommendation</u> Modify to read “Each Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to <u>at a minimum</u>, the requirements listed in this Part VI.D.4.”</p>
59	Residential Outreach	VI.D.4.d.i.(3) [Page 60]	<p>Same as Comment No. 58.</p> <p><u>Recommendation</u> Modify to read "Distribute activity specific stormwater pollution prevention public education materials to at, but not limited to <u>at a minimum</u>, the following points of purchase:"</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.5. Industrial/Commercial Facilities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
60	Nurseries	VI.D.5.b.i.(1)(d) [Page 61]	<p>This draft Permit now includes nurseries and nursery centers as a critical source to be tracked. There is no clear justification for including these types of commercial facilities.</p> <p><u>Recommendation</u> Provide justification for including these sites as a critical source.</p>
61	Coverage Under other Permits	VI.D.5.b.ii.(10) [Page 62]	<p>The draft Permit requires the inventory to have the ability to denote if the facility is known to maintain coverage under the State Water Board's General NPDES Permit for the Discharge of Stormwater Associated with Industrial Activities (Industrial General Permit) or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.</p> <p><u>Recommendation</u> To assist the Permittees in completing the inventory, we request the State Water Board and Regional Water Board to provide a listing of all new and any closed Industrial General Permit facilities on a quarterly basis.</p>
62	Business Assistance Program – Time to Develop and Implement	VI.D.5.c.ii. [Page 62]	<p>Because there is no distinct timeline noted for this requirement, Part VI.D.1.b.i. as currently written requires this provision be implemented within 30 days after the effective date of this Order. This provision is a new requirements and the County will need additional time to develop and implement a Business Assistance Program.</p> <p><u>Recommendation</u> Revise to read: “Each Permittee shall implement a Business Assistance Program <u>within one year of the effective date of this Order</u> to provide technical information...”</p>
63	Exclusion of Facilities Previously Inspected by the Regional Water Board	VI.D.5.e.i.(2) [Page 64]	<p>This provision requires each Permittee to review the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) database at defined intervals to determine if an industrial facility has recently been inspected by the Regional Water Board. We have had much difficulty in extracting a listing of facilities within the unincorporated County areas since many times, the listed jurisdiction is not correct (for example, the site is listed as being within a particular city, but is actually within an unincorporated County area).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.5. Industrial/Commercial Facilities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
63 (cont.)	Exclusion of Facilities Previously Inspected by the Regional Water Board	VI.D.5.e.i.(2) [Page 64]	<u>Recommendation</u> Request that the Regional Water Board maintain a list of the facilities within the region according to their proper jurisdiction and make it available to the Permittees. Regional Water Board should also provide the Permittees with a quarterly listing of facilities they have inspected.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
64	Existing ordinances	NA	Permittees that have adopted LID ordinances and corresponding technical documents should be allowed to implement those existing requirements.
65	Inconsistent criteria for projects subject to post construction BMP requirements	VI.D.6.b.i(a)-(h) [Pages 67-68]	This provision establishes the scope of development projects subject to post construction controls. The surface area criteria is inconsistent as sometimes the criterion is based on impervious area and other times it is based on surface area. <u>Recommendation</u> For items b, c, d, e and h where "surface area" is used, clarify by using " <u>disturbed</u> surface area".
66	Inappropriate terminology for project descriptions	VI.D.6.b.i.(b)&(c) [Page 68]	The terms "industrial parks" and "commercial strip malls" are inconsistent with terminology normally used to describe development projects and will create confusion between the project developer and Permittees. <u>Recommendation</u> Revise to read: "industrial <u>projects parks</u> " and "commercial <u>projects strip malls</u> " to provide Permittees with flexibility to include broader coverage. Items b and c may be combined for simplicity.
67	Clarification of redevelopment projects subject to post construction BMPs	VI.D.6.b.i(i) [Page 68]	This provision needs to be clarified to remove ambiguity and confusion for the Permittees. <u>Recommendation</u> The term "Redevelopment projects in subject categories" should be modified to read "Redevelopment projects in categories 'a through h' above".
68	Exemptions to Applicability ("Grandfather clause")	VI.D.6.b.ii.(d) [Page 69]	Language of the draft Permit states that: (d) Existing Development or Redevelopment projects shall mean projects that have been constructed or for which grading or land disturbance permits have been submitted and deemed complete prior to the adoption date of this Order, except as otherwise specified in this Order." The ideal time to incorporate LID into projects is during the early planning phases before tentative maps have been approved. Projects that are already past this stage should be considered to be existing projects.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
68 (cont.)	Exemptions to Applicability (“Grandfather clause”)	VI.D.6.b.ii.(d) [Page 69]	<p><u>Recommendation</u> Delete Section (d) and replace it with the following language: “Existing Development or Redevelopment shall mean projects that have been constructed; or have discretionary approval such as tentative maps, conditional use permits, and plot plans; or have permits for construction for non-discretionary projects. Projects that are not exempt as of the effective date of this order must comply with the requirements of this Order.”</p>
69	Use of green roofs is not practical on all buildings	VI.D.6.c.i.(4) [Page 70]	<p>There are a variety of issues to be considered when assessing the viability of green roofs. The structure type (wood frame is not a practical application), and building use are primary factors. Further, green roofs in the LA area will need irrigation. A water budget study and building type study should be performed to determine design guidelines prior to mandating large scale use.</p> <p><u>Recommendation</u> Delete Part VI.D.6.c.i.(4)</p>
70	Unnecessary BMP analysis	VI.D.6.c.i.(4) [Page 70]	<p>This section implies that all projects must analyze green roofs and rain water harvests systems. Projects should only be required to provide this type of analysis if they cannot infiltrate in another fashion. Then they should analyze green roofs and rainwater harvest systems before moving into other alternatives such as biofiltration. Also it is not practical to analyze green roof systems at the tentative development phase of a project. This type of system requires detailed structural building plans and would have to be designed and reviewed at a building permit stage of development.</p> <p><u>Recommendation</u> In Part IV.D.6.c.i.(4), change “each Permittee shall consider” to “each Permittee may consider”</p>
71	Alternative compliance process is difficult to follow and will be nearly impossible to administer.	VI.D.6.c.ii [Page 70]	<p>The alternative compliance process provided in this tentative order is very complex and convoluted and will be difficult to administer consistently.</p> <p><u>Recommendation</u> Streamline the process and simplify and clarify the language.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
72	Regional Ground Water Replenishment	VI.D.6.c.ii. [Page 70]	<p>Currently, the Permit appears to allow developers to do Regional ground water replenishment without demonstrating technical infeasibility of on-site infiltration. We disagree with this approach. Regional ground water replenishment should only be an option after having demonstrated technical infeasibility.</p> <p><u>Recommendation</u> Revise VI.D.6.c.ii. as follows: Alternative Compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment.</p> <p>Also revise VI.D.6.c.ii.(1) as follows: In instances of technical infeasibility or where a project has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location, each Permittee may allow projects to comply with this Order though the alternative compliance measures as described in Part VI.D.6.c.iii.</p>
73	Alternative Compliance for Technical Infeasibility	VI.D.6.c.ii.(2)(d)&(e) [Page 71]	<p>Tentative Permit requires infiltration BMPs in locations where either known soil and/or groundwater contamination exists (or has been closed and left in-place) or where hazardous substances are stored underground in underground storage tanks. The tentative Permit in a casual manner recognizes in this section, that technical infeasibility does (may) exist. But while it provides for alternative compliance for “brownfield” sites and for sites where “pollutant mobilization” is a documented concern, it doesn’t provide for any real alternatives for these kinds of industrial/commercial properties (unless the property owner owns multiple properties in the same subwatershed and can afford to substitute and subject another property to these retention and infiltration BMPs). We do not want infiltration around new/existing USTs and piping or in and through contaminated soil, whether in the cleanup phase or closed (as contamination may be allowed to remain in-place under a condition which would prevent further migration of pollutants.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
73 (cont.)	Alternative Compliance for Technical Infeasibility	VI.D.6.c.ii.(2)(d)&(e) [Page 71]	<u>Recommendation</u> Infiltration BMPs should be prohibited at or near properties that are contaminated or store hazardous substances underground. Treatment Control BMPs as prescribed in the current Permit as part of SUSMP is the preferred way to deal with these kinds of sites.
74	Technical Infeasibility and Alternative Compliance Measures	VI.D.6.c.ii. [Pages 70-71]	Clarify that all projects have to prove technical Infeasibility first before they are allowed to consider Alternative Compliance Measures. The current Permit language is confusing and contradicts itself.
75	Attachment I	VI.D.6.c.iii (1)(b)(ii) [Page 72]	Attachment I does not discuss design criteria to achieve enhanced nitrogen removal. <u>Recommendation</u> Include the appropriate criteria.
76	Off site projects – Cash in lieu option	VI.D.6.c.iii.(4)(h) [Page 74]	We expect the “Cash in lieu” option will almost always be favored by the developers since it is easier than designing and constructing a project. However, the program will be problematic and expensive for the Permittees to administer. Based on our conversation with Regional Water Board Staff on July 17, 2012, it is our understanding that the Cash in lieu provision is intended to be a discretionary tool for the Permittee. <u>Recommendation</u> Revise the language to reflect the intent of the Cash in lieu provision.
77	Definition of watershed and subwatershed	VI.D.6.c.iii.(4)(b) [Page 73]	The Basin Plan (appendix 2) uses the terms "hydrologic unit, hydrologic area, and hydrologic subareas" not HUC-12 or HUC-10. Clarification should be provided to reconcile the different terms. We suggest that the permit use the "hydrologic area" as equivalent to HUC-12 hydrologic area.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
78	Time frame for third party petition	VI.D.6.c.iii(4)(g) [Page 74]	<p>The schedule for third party petition of offsite projects or EO approval should not be open ended but limited to 30 days.</p> <p><u>Recommendation</u> Add the following to the end of this section: “if received within 30 days of Permittee approval of the offsite project. The Regional Water Board shall have 90-days to review the petition and approve it or deny it. If a Regional Water Board response is not received within 90-days of third party petition, then the original Permittee approval shall be upheld.”</p>
79	Projects that treat water offsite through retention, infiltration or use should not also have to treat water onsite.	Vi.C.6.c.iv.(1) [Page 74]	<p>Revise to indicate that no onsite treatment is required.</p>
80	Cause or Contribute to Exceedance	Vi.C.6.c.iv (1)(b) [Page 74]	<p>Such requirements center on the treatment of stormwater runoff from the project site, including meeting the pollutant specific benchmarks set forth in the attached table (Table 11) and “<u>ensure that the discharge does not cause or contribute to an exceedance of water quality standards at the Permittee’s downstream MS4 outfall.</u>” We have some concerns with respect to the second requirement. The requirement not to cause or contribute to exceedance of a water quality standard is not contained in the CWA, which only requires Permittees to effectively prevent non-stormwater discharges to the MS4 and to take steps to the MEP to address pollutants in discharges from the MS4. Additionally, more clarity is needed on the meaning of “Permittee’s downstream MS4 outfall.”</p> <p><u>Recommendation</u> Delete paragraph iv (1)(b). In addition, delete Paragraph (3) on Page 75, with similar language”each Permittee shall ensure that the new development or redevelopment will not cause or contribute to an exceedance of applicable water quality based effluent limitations”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
81	Benchmarks Applicable to New Development Treatment BMPs. Conventional Pollutants and Metals.	VI.C.6.c.iv.(1)(a) Table 11 [Pages 74-75]	<p>Table 11 was developed from the median effluent water quality values of the three highest performing BMPs, per pollutant, in the storm water BMP database. BMP selection should be based on the median for all BMPs and not the three highest performing BMPs. In addition, one should select most performing BMP as a <i>whole</i> and not just for one pollutant. This table sets unrealistically low threshold that cannot be met with the available technology.</p> <p>During the staff workshop on July 9, 2012 staff indicated this table was intended as a set of guidelines for choosing BMPs and not intended to be used as effluent limits.</p> <p><u>Recommendation</u> Revise the language to reflect the stated intent that Table 11 is only a guideline. If performance standards remain, replace Table 11 with Attachment C from the Ventura County Permit.</p>
82	Erosion Potential (Ep) Method	VI.D.6.c.v. [Pages 75-79]	<p>Any Method to be used in Hydromodification should be simple and practical.</p> <p><u>Recommendation</u> Instead of using the Erosion Potential (Ep) method, the critical flow that triggers the movement of sediment can be computed. This critical flow shall be less than the 85 or 95 percentile values to achieve hydromodification.</p>
83	Hydromodification (Flow/Volume/Duration) Control Criteria	VI.C.6.c.v. [Page 75]	<p>The tentative order states that “the purpose of modification is to implement hydrologic control measures to <u>prevent erosion</u> and protect stream habitat in natural drainage systems. However, in the same paragraph, it states, the purpose of hydrologic controls is to <u>minimize changes in post development</u>.”</p> <p><u>Recommendation</u> Clarify.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.6. Planning and Land Development Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
84	Erosion Potential (Ep) Method	VI.D.6.c.v.(a)(1) [Page 75]	Erosion Potential (Ep) has to be computed based on Appendix J. There is not sufficient information in Appendix J that clearly describes how to compute Ep. What frequency-base storms or flow durations should the Ep be computed? <u>Recommendation</u> Clarify Ep formula, in addition, Ep Equation in Appendix J shall be checked for accuracy and the parameters and their units shall be adequately defined.
85	Interim Hydromodification Control Criteria.	VI.D.6.c.v.(c) [Page 77]	Site retention of the 95 percentile storm was suggested to achieve modification. Specify the duration of the storm. For Water Quality purpose such as Hydromodification and TMDLs, the percentile is a preferred method. The 2-year 24-hour rainfall event is good for analyzing extreme events like floods.
86	Unreasonable expectations for maintenance agreements	VI.D.6.d.iii. [Page 81]	Requiring maintenance agreements for all LID practices is highly problematic. Most LID strategies will be implemented at the site level (including individual residents) and to require homeowners to enter into maintenance agreements for their LID practices is impractical and a huge cost implications. Rather the maintenance agreements should be limited to regional facilities and/or treatment control BMPs.
87	Inspection of BMPs	VI.D.6.d.iv.(1)(c)(ii) [Page 82]	BMP inspection based on a fixed time interval is arbitrary and poor use of resources. The Permittee should be allowed to prioritize inspection based on previous inspection history.
88	Post Construction BMPs O&M	VI.D.6.d.iv.(1)(d) [Page 82]	"The Permittee shall require annual reports by the other parties demonstrating proper maintenance and operations" This proposed language is not practical and is difficult to enforce on private property owners. As an alternative we recommend that private property owners should maintain their records on site, and make them available upon request.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.7. Development Construction Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
89	General Comment	VI.D.7.b. [Page 83]	The term “construction site” is not defined in this section or in Attachment A – Definitions. <u>Recommendation</u> Define “construction site” in this section or in Attachment A – Definitions. Recommend using the same definition for “construction site” as the Construction General Permit (2009-0009-DWQ).
90	Table 12. Minimum Set of BMPs for all Construction Sites	VI.D.7.d.i.(1) Table 12 [Page 83]	The draft Permit requires an effective combination of erosion and sediment control BMPs from Table 12. However, the title of the table, “Minimum Set of BMPs for All Construction Sites” implies that all the listed BMPs would be required on all construction sites. Not all of those BMPs such as a silt fence are applicable for all construction sites disturbing less than one acre of soil. <u>Recommendation</u> Revise the title of Table 12 to note that the BMPs listed are required if applicable.
91	Database or Tracking System for Construction Sites less than one acre	VI.D.7.d.i.(2) [Page 84]	It is unclear what “activities that require a permit” means. Does this refer to Building and Grading Permits issued by the Permittee or is the database required to track permits issued by outside agencies, such as California Department of Fish and Game, RWQCB, etc. <u>Recommendation</u> Clarify “activities that require a permit”.
92	Construction Sites one acre or greater	VI.D.7.f. [Page 84]	The statement “all activities involving soil disturbance” is unclear. This section of the Permit pertains to construction sites 1 acre or greater. <u>Recommendation</u> Revise to state: “The requirements contained in this part apply to all <u>construction site</u> activities involving soil disturbance with the exception of agricultural activities”. In addition, insert a subtitle at Section (e) Stating “ <u>Requirements for Construction Sites greater than One Acre</u> ”

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.7. Development Construction Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
93	Database or Tracking System for Construction Sites one acre or greater	VI.D.7.g.ii.(3) [Page 85]	<p>The inventory / tracking system shall contain, at a minimum: The proximity all water bodies, water bodies listed as impaired by sediment-related pollutants, and water bodies for which sediment related TMDL has been adopted and approved by USEPA. This information is already contained in the State's Storm Water Multiple Application and Report Tracking System (SMARTS) Database. The SMARTS Database already inventories construction sites greater than one acre and the proximity to the above water bodies.</p> <p><u>Recommendation</u> Allow Permittees to use existing non-electronic inventory/tracking systems if they work. Also, clearly state that this requirement only applies to construction sites greater than one acre.</p>
94	Database or Tracking System for Construction Sites one acre or greater	VI.D.7.g.ii.(4) [Page 85]	<p>The inventory / tracking system shall contain, at a minimum: Significant threat to water quality status, based on consideration of factors listed in Appendix 1 to the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit). This information is already contained in the State's Storm Water Multiple Application and Report Tracking System (SMARTS) Database. The SMARTS Database already inventories construction site greater than one acre and identifies water body risks.</p> <p><u>Recommendation</u> Allow Permittees to use existing non-electronic inventory/tracking systems if they work. Also, clearly state that this requirement only applies to construction sites greater than one acre.</p>
95	Table 14. - Erosion Controls	VI.C.7.i.v. Table 14 [Page 88]	<p>It is unclear if these Erosion Control BMPs, (Hydraulic Mulch, Hydro-seeding, Soil Binders, Straw Mulch, Geo-textiles and Mats, Wood Mulching), are intended to be minimum requirements of if they are suggested as Erosion Control options. It is not always applicable to use these BMPs in concert with each other.</p> <p><u>Recommendation</u> Clarify that one or a combination of the listed BMPs shall be selected and implemented as erosion controls.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.7. Development Construction Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
96	Table 14. - Sediment Controls	VI.C.7.i.v. Table 14 [Page 88]	<p>It is unclear if these Sediment Control BMPs (Fiber Rolls, Gravel Bag Berms and Check Dams) are intended to be minimum requirements or if they are suggested as Sediment Control options. They are not always applicable on all construction sites disturbing one acre or more.</p> <p><u>Recommendation</u> Clarify that one or a combination of Sediment Control BMPs for prevention of sediment discharges along the perimeter of the Project site shall be implemented.</p>
97	Table 14. - Additional Controls	VI.C.7.i.v. Table 14 [Page 88]	<p>Stabilized Construction Roadway and Entrance/Exit Tire Wash are not applicable to all construction sites disturbing more than one acre.</p> <p><u>Recommendation</u> Clarify that these BMPs should be implemented as needed.</p>
98	Table 15. - Additional Controls	VI.C.7.i.v. Table 15 [Page 89]	<p>Advanced Treatment Systems are not applicable to all Risk Level 3 Projects and is listed as an optional BMP in the Construction General Permit.</p> <p><u>Recommendation</u> Delete this BMP from the additional BMPs list.</p>
99	Table 15. - Non- Storm Water Management	VI.C.7.i.v. Table 15 [pages 89]	<p>Dewatering Operations is not always applicable</p> <p><u>Recommendation</u> Delete this BMP from the Non-Storm Water Management BMP list.</p>
100	Construction Site Inspection Frequency	VI.D.7.j.ii. Table 17 [Page 90]	<p>The inspection frequencies identified in Table 17 are in direct contradiction to the Construction General Permit (2009-0009-DWQ).</p> <p><u>Recommendation</u> Delete Table 17 and insert the inspection frequencies already identified in Construction General Permit (2009-0009-DWQ) - Attachments A, C, D and E.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
101	Public Construction Activities Management Project Applicability	VI.D.8.b.iii. [Page 93]	<p>This requirement states that for Permittee-owned projects that disturb less than one acre of soil, implement an effective combination of erosion and sediment control BMP's from Table 13 on page 87. It is not clear that these requirements do not apply to maintenance work.</p> <p><u>Recommendation</u> Revise to read: "For Permittee-owned or operated projects that disturb less than one acre of soil, <u>except where the project is considered maintenance work</u>, each Permittee shall require an effective combination of erosion and sediment control BMP's from Table 13."</p>
102	Public Facility Inventory – Time to Implement	VI.D.8.c.i. [Page 93]	<p>Because there is no distinct timeline noted for this requirement, Part VI.D.1.b.i. as currently written requires this provision be implemented within 30 days after the effective date of this Order. This provision is a new requirement and the County will need additional time to develop an inventory of its facilities that are potential sources of storm water pollution.</p> <p><u>Recommendation</u> Revise to read: "Each Permittee shall develop<u>maintain</u> an updated inventory of all Permittee-owned or operated (i.e., public) facilities within its jurisdiction that are potential source of storm water pollution <u>within one year of the effective date of this Order.</u>"</p>
103	Inventory for Retrofitting Opportunities – Time to Implement	VI.D.8.d.i. [Page 94]	<p>Because there is no distinct timeline noted for this requirement, Part VI.D.1.b.i. as currently written requires this provision be implemented within 30 days after the effective date of this Order. This provision is a new requirement and the County will need additional time to develop an inventory of existing Development for Retrofitting Opportunities.</p> <p><u>Recommendation</u> Revise to read: "Each Permittee shall develop an inventory for retrofitting opportunities that meets the requirements of this Part VI.8.D <u>within 2 years of the effective date of this Order.</u></p>
104	Contractual Requirements for BMPs	VI.D.8.e.iv. [Page 96]	<p>This provision requires contractors hired by the Permittee to be contractually required to implement and maintain the activity specific BMPs listed in Table 18. Flexibility is needed to allow Permittees to require implementation of their own equivalent set of BMPs. This language is already included under the Development Construction Program in Part VI.D.7.h.iii.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
104 (cont.)	Contractual Requirements for BMPs	VI.D.8.e.iv. [Page 96]	<p><u>Recommendation</u> For consistency with other parts of the Permit, revise to read: “any contractors hired by the Permittee...shall be contractually required to implement and maintain the activity specific BMPs listed in Table 18 or an equivalent set of BMPs for the range of activities in Table 18.”</p>
105	Integrated Pest Management Program – Time to Implement	VI.D.8.g.ii. [Page 99]	<p>Because there is no distinct timeline noted for this requirement, Part VI.D.1.b.i. as currently written requires this provision be implemented within 30 days after the effective date of this Order. This provision is a new requirement and the County will need additional time to develop an IPM program.</p> <p><u>Recommendation</u> Revise to read: “Each Permittee shall implement an IPM program <u>within one year of the effective date of the Order. It shall that include the following:</u>”</p>
106	Integrated Pest Management	VI.D.8.g.iii.(2) [Page 100]	<p>This requirement states that no application of pesticides or fertilizers should occur (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA, (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides. There are some herbicides, such as pre-emergent herbicides, that require rainfall for activation. The Permit needs to allow flexibility for application of such types of pesticides or herbicides.</p> <p><u>Recommendation</u> Revise to read: (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides, <u>or to herbicides that are required or allowed by their product label to be activated by rainfall.</u>”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
107	Trash Management at Public Events	VI.D.8.h.iv.(c) [Page 101]	<p>This requirement states that catch basins, trash receptacles, and grounds in the event area be cleaned out within 24 hours subsequent to the event. Many of these events occur during the weekend when crews are not available.</p> <p><u>Recommendation</u> Revise to: "Provide clean out of catch basins, trash receptacles, and grounds in the event area within 24 hours <u>one business day</u> subsequent to the event.</p>
108	Trash Management	VI.D.8.h.v. [Page 101]	<p><u>Recommendation</u> Clarify that these requirements only apply to areas not subject to a trash TMDL.</p>
109	Installation of Trash Excluders on Catch Basins in Areas Not Subject to a Trash TMDL	VI.D.8.h.vii [page 102]	<p>This condition requires trash excluders or equivalent devices be installed on catch basins in areas that are not subject to trash TMDL's within two years of adoption of this Order. The two year time period is not feasible.</p> <p><u>Recommendation</u> We recommend that the timeline be extended to four years to allow for funding to be secured, locations to be identified, design to be prepared, contract to be issued for construction and maintenance, and installation of the devices.</p>
110	Road Reconstruction BMPs	VI.D.8.iii(11, 12) [Page 105]	<p>This section requires various BMPs be implemented for Road Reconstruction work, including (11) Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grinding materials or rubble in or near MS4 or receiving waters. (12) Protect Stockpiles must be protected with a cover or sediment barriers during a rain.</p> <p>For roads in mountainous areas, it is essential that we have the ability to stockpile native materials removed from the roads in selected areas adjacent to the roads for future maintenance needs. It is not practical to haul away these materials and purchase similar materials for later use.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
110 (cont.)	Road Reconstruction BMPs	VI.D.8.iii(11, 12) [Page 105]	<p>Also, it is not feasible to cover stockpiles of native material along mountainous roads, or non-native materials such as rip rap or gravel larger than 1-inch in diameter, as these materials will not wash away during rainfall events.</p> <p><u>Recommendation</u> Revise to read: (11) Avoid stockpiling <u>non-native soil</u>, sand, sediment, asphalt material and asphalt grinding materials or rubble in or near MS4 or receiving waters. (12) Protect <u>non-native soil</u> stockpiles with a cover or sediment barriers during a rain, <u>except non-native materials such as rip rap or gravel that is larger than 1-inch in diameter.</u></p>
111	Parking Facilities Maintenance	VI.D.8.i.iv.(1) [Page 105]	<p>This requirement specifies the use of street sweeping equipment for maintaining parking facilities clean. This language is too prescriptive. Permittees should be allowed to select the means and methods to maintain their parking lots.</p> <p><u>Recommendation</u> Revise to read: "Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned using street sweeping equipment no less than 2 times per month..."</p>
112	Emergency Procedures	VI.D.8.j.i.(3) [Page 105]	<p>Minor repairs may require more than one day to complete. It may take several days to assess the damages, gather materials and supplies, conduct the repair work, and clean-up the site.</p> <p><u>Recommendation</u> Revise to read: (3) Minor repairs of essential public service systems and infrastructure in emergency situations (that can be completed <u>in three days less than one day</u>) are not subject to the notification provisions.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.8. Public Agency Activities Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
113	Employee and Contractor Training	VI.D.8.k.i & ii. [Page 106]	<p>This provision requires training of employees and contractors no later than 1 year after Order adoption and annually thereafter before June 30. The language is not consistent with that under the Illicit Connections/Illicit Discharges Elimination Program, that provides Permittees the flexibility to provide the training themselves or include contractual requirements for training (VI.D.9.f.ii.).</p> <p><u>Recommendation</u> For consistency with other parts of the Permit, revise to read: (1) Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees and contractors in targeted positions (whose interactions, jobs, and activities affect storm water quality), <u>or include contractual requirements for training,</u> on requirements of the overall storm water management program to: (2) Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees and contractor who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work), <u>or include contractual requirements for training.</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.9. Illicit Connections and Illicit Discharges Elimination Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
114	General – Timelines for Written Standard Operating Procedures	VI.D.9. [Pages E-106 – E-110]	<p>The Permit requires written standard operating procedures, written spill response plans, and for the IC/ID Elimination Program. During the 2001 Permit term, the Model Program for Stormwater Quality Management Program was allowed approximately 6 months to be updated. As the Permit will require inter-agency response and coordination, sufficient time is required to develop, update, and coordinate such procedures with various impacted municipalities and non-Permittee agencies.</p> <p><u>Recommendation</u> Provide a minimum of 9 to 12 months to update and develop new written procedures as necessary. If written procedures are tied to the Watershed Management Plans (WMP) or individual Implementation Plans (IPs), additional time may be required to reflect any changes due to the WMPs and IPs.</p>
115	Illicit Discharge Source Investigation and Elimination	VI.D.9.iv.(3) & VI.D.9.b.v. [Page 108]	<p>Requires the Permittee to initiate a permanent solution if the source of the illicit discharge cannot be traced, including diversion of the entire flow to the sanitary sewer or treatment.</p> <p>As previously commented, there may be situations where the illicit discharge is extremely difficult to trace, the responsible party/parties is/are not clear, diversion to the sanitary sewer is not feasible (due to the size or location of the discharge), or treatment is too cost prohibitive. For example, the oil discharge discovered in January 2011 in the Dominguez Channel near 223rd Street in the City of Carson involved months of investigation involving multiple agencies and possible responsible parties. The discharger(s) must be held responsible and be part of the solution.</p> <p>Even if there might be sufficient sanitary sewer capacity, the Permittee cannot guarantee diversion when that system is likely owned by another entity.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.D.9. Illicit Connections and Illicit Discharges Elimination Program			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
115 (cont.)	Illicit Discharge Source Investigation and Elimination	VI.D.9.b.iv.(3) & VI.D.9.b.v. [Page 108]	<p><u>Recommendation</u> Revise as follows: iv.(3) If the source of the illicit discharge cannot be traced to a suspected responsible party, affected Permittees shall implement its spill response plan and then initiate a permanent solution as described in section 9.b.v below.</p> <p>v. In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, including the inability to find the responsible party/parties, the Permittee shall provide for diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee(s) shall notify the Regional Water Board within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion available information for the Regional Water Board to further and appropriate actions against the suspected discharger(s).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
116	TMDLs are Applicable to Receiving Waters	VI.E.1.a. [Page 111]	<p>Part VI.E.1.a. This part provides that the Permittees shall achieve WLAs and meet the other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges. The Permit and its attachments are ambiguous, however, with respect to the application of those TMDLs to receiving waters as opposed to the MS4.</p> <p><u>Recommendation</u> Add as a final sentence to Part VI.E.1.a. the following: "The TMDLs apply to the receiving waters identified in Attachments L-R."</p>
117	Commingled Discharges	VI.E.2.b. [Pages 111-112]	<p>As previously commented, 40 CFR section 122.26(a)(3)(vi) provides that "Co-Permittees need only comply with permit conditions relating to discharges for which they are operators." This section was adopted in anticipation of intra-system, multi- or co-permittee approaches to storm water management, <i>See In re City of Irving, Texas Municipal Separate Storm Sewer System</i>, Environmental Administrative Decisions 111, 128 (EAB 2001), and thus this section applies to commingled discharges. Accordingly, the section on commingled discharges should make clear that where there is a commingled discharge to a receiving water, the Permittees who contribute to the commingled discharge are required to work together to assure that the waste load allocation is met, but no one Permittee is responsible for meeting the waste load allocation itself or is responsible for addressing pollutants that come from another Permittee's MS4. The section on commingled discharges needs to be clarified to make this principle clear.</p> <p>Subparagraph iii states compliance shall be determined for the group as a whole. This contradicts subparagraph ii and 40 CFR § 122.26(a)(3)(vi) which provide that each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators. Subparagraph iii needs to be clarified to make clear that it is not intended to conflict with subparagraph ii.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
117 (cont.)	Commingled Discharges	VI.E.2.b. [Pages 111-112]	<p><u>Recommendation</u> Add the following sentence at the end of subparagraph iii: “A determination that the discharge of the group as a whole exceeds a waste load allocation or water quality standard shall not be construed to mean that the discharge of any one Permittee is not in compliance with the waste load allocation or water quality standard.”</p>
118	Commingled Discharges	VI.E.2.b.iv. [Page 112]	<p>As previously commented, this section states that each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance. For clarification, this section should be modified to provide that where a commingled discharge exceeds applicable water quality standard, all Permittees that have contributed to the commingled discharge are responsible for determining the source(s) of the pollutants.</p> <p><u>Recommendation</u> For clarification, subparagraph iv should be replaced with, “For purposes of compliance determination all Permittees that have contributed to the commingled discharge are responsible for determining the source of the pollutants.”</p>
119	Commingled Discharges	VI.E.2.b.v. [Page 112]	<p>As previously commented, this subparagraph addresses how a Permittee can demonstrate that its discharge did not cause or contribute to an exceedance. Where a Permittee receives commingled discharges from upstream permitted and non-permitted sources, the Permittee should be allowed to show that its discharge contains pollutants, the sources over which the Permittee does not have control.</p> <p><u>Recommendation</u> Add a subparagraph 4 that says, “Demonstrate that its discharge contains contributions from other sources, including but not limited to discharges of other Permittees, which have the potential to have caused or contributed to the exceedance at issue.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
120	Compliance by Demonstration of No Discharge	VI.E.2.b.v.1. [Page 112]	<p>As previously commented, item (1) states that compliance may be demonstrated if there is no discharge from the Permittee's MS4 into the applicable receiving water. This language is not consistent with the sections for Interim WQBELs and/or RWLs or for Final WQBELs and/or RWLs.</p> <p><u>Recommendation</u> Revise to read: "Demonstrate that there is no discharge from the Permittee's MS4 into the applicable receiving water <u>during the time period subject to the water quality based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL;</u>"</p>
121	Receiving Water Limitations Addressed by a TMDL	VI.E.2.c.iii. [Page 113]	<p>This subparagraph provides that as long as a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO), it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO. While this is not the Regional Water Board's intention, this would open Permittees up to third-party lawsuits. Therefore, the reference to a TSO should be replaced with the Watershed Management Program.</p> <p><u>Recommendation</u> Change the subparagraph to: "As long as a Permittee is in compliance with the Watershed Management Program, the Permittee shall not be in violation of the applicable Receiving Water Limitations."</p>
122	The Final WQBEL Effluent Limitations and WLAs Should be Reflected as BMPs, Not Numeric Effluent Limits	VI.E.2.e. [Page 114]	<p>If WQBELs or TMDL WLAs are included in the Permit they are not required to be reflected in the form of numeric effluent limits. With respect to this Permit, it is an abuse of discretion to do so. If WQBELs or TMDL WLAs are included in the Permit, they should be reflected in the form of BMPs.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
123	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The County is very concerned with staff’s proposal to express final TMDL WLAs as strict numeric WQBELs and/or Receiving Water Limitations in the Permit. The State Water Board's Blue Ribbon Panel (see Exhibit G - State Water Board Blue Ribbon Panel Final Report) found in 2006 that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." As mentioned in our Comment No. 27 regarding the proposed RWL language, in its response to public comments dated April 27, 2012, regarding the Draft Tentative Order for the renewal of the Caltrans MS4 Permit, State Water Board staff cited the Blue Ribbon Panel’s findings in defending its decision to not incorporate NELs in that Permit. State Water Board staff stated, “Consistent with the findings of the Blue Ribbon Panel and precedential State Water Board orders (State Water Board Orders Nos. WQ 91-03 and WQ 91-04), this Order allows the Department [Caltrans] to implement BMPs to comply with the requirements of this Order.” (SWRCB Comment Response Report, for Caltrans MS4 Permit, April 27, 2012, Page 2 of 110).</p> <p>State Water Board staff further noted that “in November 12, 2010, USEPA issued a revision to a November 22, 2002 memorandum in which the USEPA had ‘affirm[ed] the appropriateness of an iterative, adaptive management best management practice (BMP) approach’ for improving stormwater management over time. In the revisions, USEPA recommended that, in the case the permitting authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality excursion, the permitting authority, where feasible (<i>emphasis added</i>), include numeric effluent limitations as necessary to meet water quality standards. However, the revisions recognized that the permitting authority’s decision as to how to express water quality based effluent limitations (WQBELs), i.e. as numeric effluent limitations or BMPs, would be based on an analysis of the specific facts and circumstances surrounding the Permit. Moreover, USEPA has since invited comment on the revisions to the memorandum and will be making a determination as to whether to ‘either retain the memorandum without change, to reissue it with revisions, or to withdraw it.’” (<i>ibid</i>).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
123 (cont.)	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The Regional Water Board is not required to reflect the final WQBELs as numeric effluent limits. 40CFR 122.44(k)(2) and (3) specifically authorizes the use of BMPs. The State Water Board, in its response to comments on the proposed Caltrans Permit, specifically said that it may “impose BMPs for control of storm water discharges in lieu of numeric effluent limitations,” citing section 122.44(k)(2) and (3). It has not been demonstrated that it is feasible to reflect the final WQBELs as numeric effluent limits. In addition, it has not been proven that these final WQBELs can currently be met.</p> <p>In this regard, although Regional Water Board staff stated during the May 3 workshop that it is feasible to incorporate NELs at this time, staff did not provide evidence to substantiate the feasibility of NELs. In assessing the feasibility of NELs in stormwater permits, the Blue Ribbon Panel based its evaluation on four criteria: (1) The ability of the State Water Board to establish appropriate objective limitations or criteria; (2) how compliance determinations would be made; (3) the ability of dischargers and inspectors to monitor for compliance; and (4) the technical and financial ability of dischargers to comply with the limitations or criteria (<i>emphasis added</i>). In response to a Regional Water Board member question regarding the cost to comply with TMDLs, staff responded that cost analyses were completed as part of TMDL development. Significantly, the analysis of costs in the TMDLs did not address the question of the financial ability of dischargers to comply with the limitations or criteria. Nor did the analysis include a cost-benefit analysis or address whether the means to comply with the TMDL was cost effective. The analyses in the TMDLs specifically did not include a cost benefit analysis or a determination of whether it was cost effective. It is also important to note that staff’s cost analyses were not held to the “reasonable assurance” standard, and no quantitative analyses were done to demonstrate that the BMPs assumptions used by staff would have a reasonable assurance of meeting TMDL standards. In fact, during TMDL development, many Permittees made comments to this end regarding staff’s cost analyses for TMDLs. The County agrees with State Water Board staff that NELs, numeric WQBELs and/or Receiving Water Limitations currently are not feasible in stormwater permits. Los Angeles Region MS4 dischargers should not be held to enforceable NELs when discharges into the MS4, such as from Caltrans and construction sites, are not being held to the same standard.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
123 (cont.)	Final WQBELs and/or Receiving Water Limitations	VI.E.2.e. [Page 114]	<p>The Regional Water Board staff has submitted no evidence that demonstrates that compliance with numeric WQBELs or WLAs is feasible. The fact sheet contains no evidence. Instead the fact sheet solely cites unidentified work allegedly performed in adopting the TMDLs. That work is not set forth in the fact sheet, and no such work demonstrating feasibility has been performed. Indeed, when preparing the TMDLs, no analysis was performed as to whether TMDLs could be achieved under the MEP standard, or any other standard, and no analysis was performed of whether the implementation was feasible.</p> <p>To further evaluate the feasibility of the numeric approach and explore possible alternatives, the County conducted an extensive review and analysis of other Phase I permits, EPA guidance documents and policies, and other pertinent information. The results of these analyses and additional related comments are contained in Exhibit K - TMDLs into SW Permits Review 20Jul12, Exhibit Q - Comments TM LACMS4 TMDLs 21Jul2012, & Exhibit R - TMDL Compliance Assessment 21Jul2012, and hereby incorporated as part of this comment.</p> <p><u>Recommendation</u> Revise the draft Permit to implement final TMDL WLAs using BMPs. See Exhibit F – LACMS4 Redlined TMDL Excerpts 20Jul2012Rev for suggested language.</p> <p>Alternatively, insert new section E.2.e.ii, “Two years before the compliance deadline for an applicable final water quality-based effluent limitation and/or final receiving water limitation, Regional Water Board shall evaluate progress made by Permittees toward compliance with the standard, including review of the results from Permittees’ adaptive management process (VI.C.6.), to determine whether the compliance timeline should remain unchanged, or if the Order should be revised to incorporate a new compliance timeline.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
124	The Permit Should not Contain Final WQBELs Based on TMDLs Where Compliance with the TMDL Will Occur After the Expiration Date of This Permit	VI.E.2.e. [Page 114]	<p>The Permit is a five year permit. Many of the TMDLs incorporated into the draft Permit contain compliance dates more than five years from the hearing on this Permit. The Regional Water Board is not required to include WQBELs and WLAs that are applicable only after the expiration of the Permit. The fact sheet and draft Permit contain no reason for doing so.</p> <p>It is an abuse of discretion for the Permit to contain WQBELs and WLAs that are applicable after the termination of the Permit. It is also not good policy, as it could restrict the flexibility of the Regional Water Board and the Permittees to address these matters in subsequent permits.</p> <p><u>Recommendation</u> Delete all references in the Permit and attachments to final WQBELs or final WLAs that are not applicable until after the five year termination date of this Permit.</p>
125	The Permit Should Require Compliance with State Adopted TMDLs Where Final Compliance Dates Have Passed Through Implementation of BMPs Not Numeric Effluent Limits	VI.E.4. [Page 116]	<p>For the reasons set forth above, the Permit is not required to reflect interim or final TMDL WLAs as numeric effluent limits. The State Water Board’s Blue Ribbon Panel (see Exhibit G - State Water Board Blue Ribbon Panel Final Report) has found that it is not feasible to set numeric effluent limits at this time, and there is no evidence that the Permittees can comply with final wasteload allocations set forth in those TMDLs whose final compliance dates have passed. There is no evidence and the fact sheet contains no reference to any such evidence.</p> <p>At the time the TMDLs were adopted, there was no evidence submitted that the TMDLs wasteload allocations could be reached on the adopted, final compliance dates. No analysis was made as to whether they could be accomplished through implementation of programs that met the MEP or any other standard.</p> <p>It is an abuse of discretion for this Regional Water Board to adopt a permit with which the Permittees cannot comply. If this Regional Water Board is going to require compliance with state adopted TMDLs where the adopted final compliance deadline has passed, then the Regional Water Board should require compliance through implementation of BMPs whether than numeric effluent limits.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
125 (cont.)	The Permit Should Require Compliance with State Adopted TMDLs Where Final Compliance Dates Have Passed Through Implementation of BMPs Not Numeric Effluent Limits	VI.E.4. [Page 116]	<u>Recommendation</u> Part VI.E.4.a. should read as follows: "Permittees shall address water quality-based effluent limitations and/or receiving water limitations in state-adopted TMDLs for which final compliance deadlines have passed either through a watershed management program or through implementation of BMPs that address those pollutants. Exceedances of the WLAs should be addressed in the watershed management program or, if the Permittee is not participating in a watershed management program, in the Permittee's integrated monitoring compliance report where required."
126	Timeframe for Submittal of Request for TSO	VI.E.4.b. [Page 116]	Should the TSO option remain, allow Permittees at least 3 months from the date of the Permit adoption to request a TSO. <u>Recommendation</u> Revise to read: "...may within 45 days 90 days request a time schedule order (TSO)..."
127	Compliance Status during TSO Application Process	VI.E.4.b. [Page 116]	As previously commented, the process to request a TSO and its approval by the Regional Water Board can potentially last a long time. Should the TSO option remain, the Permittees should be considered in compliance with the applicable receiving water limitations and/or water quality based effluent limitations from the initiation of the application process to its final approval. <u>Recommendation</u> Add as item e: "A Permittee that has applied for a TSO or is in compliance with the requirements of a Regional Water Board issued TSO is not considered in violation of the applicable final receiving water limitations and/or water quality based effluent limitations."
128	TMDL Reopeners	TMDL Provisions	As previously commented, several TMDLs, such as the Machado Lake Nutrients and Trash TMDLs, provide for reconsideration prior to final compliance deadlines. The tentative order proposal does not reflect this. <u>Recommendation</u> For consistency, statements should be added to the TMDL provisions to reflect that the Regional Water Board will reconsider those TMDLs prior to their final compliance deadlines.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Part VI.E. Total Maximum Daily Load Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
129	State Adopted TMDLs where Final Compliance Deadlines have Passed	VI.E.4. [Page 116]	<p>The draft Permit language does not include any provisions for once TMDL limits are achieved.</p> <p><u>Recommendation</u> Language should be added to state that compliance monitoring will be discontinued when the subject waterbody is delisted from the Clean Water Act section 303(d) list.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment A - Definitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
130	Numeric Action Level	VI.C.1.f.iv. [page 46]	<u>Recommendation</u> Provide a definition of “numeric action levels” in Attachment A.
131	Event Mean Concentrations (EMC)	VI.D.6.c.iii.3. [Page 72]	<u>Recommendation</u> Provide a definition of “event mean concentrations” in Attachment A and provide more detail about where the referenced “published studies” can be obtained.
132	Illicit Discharge	[Page A-4]	The definition should be consistent with federal law as set forth in 40 CFR § 122.26(b)(2). <u>Recommendation</u> Revise the definition to follow 40 CFR § 122.26(b)(2) as follows: “Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.”
133	Outfall	[Page A-7]	<u>Recommendation</u> Add the definition of “outfall” in 40 CFR §122.26 (b)(9). “Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.”
134	Reasonable Assurance	[Page A-8]	See Comment No. 55.
135	Receiving Water Limitation	[Page A-8]	<u>Recommendation</u> See Comment No. 28 in the Receiving Water Limitations section.
136	Receiving Water Limitation	[Page A-8]	The Permit is ambiguous as to what constitutes a receiving water and what constitutes a municipal separate storm sewer.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment A - Definitions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
136 (cont.)	Receiving Water Limitation	[Page A-8]	<u>Recommendation</u> Add the underlined sentence to the definition of receiving water so that it reads as follows: A “water of the United States” into which waste and/or pollutants are or may be discharged. <u>All waters of the United States for which beneficial uses are designated in the Basin Plan are receiving waters under this Order and not municipal separate storm sewers.</u>
137	Acronyms and Abbreviations	[Page A-10]	<u>Recommendation</u> Revise list to show the following: ROWD; CERCLA; O&M; MEP; CIMP; IMP; WMPP; EIA; ESAs; TMRP; and PMRP.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment B. Watershed Management Area Maps			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
138	Drainage Boundary	General	<p>The HUC boundaries do not match the watershed boundaries. This means that certain areas drain to different locations depending on whether you look at the HUC or Watershed boundary.</p> <p><u>Recommendation</u> Revise maps to match boundaries.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment C. MS4 Maps by Watershed Management Area			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
139	MS4 Map	General	<p>MS4 Map appears to be a misnomer. The “MS4” also includes municipal streets, curb and gutters, ditches, etc. However, the maps in Attachment C do not show these portions of the MS4. The maps also include Waters of the United States.</p> <p><u>Recommendation</u> Revise the title of Attachment C to: <u>Storm Drain MS4-Maps by Watershed Management Area</u></p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
140	Reporting	III.H.3. [Page E-5]	This section references Parts XVII.A.5 and XVII.A.7 of the MRP, which do not exist.
141	Integrated Monitoring Programs Timeline	IV.C.5. [Page E-8]	<p>The requirement to begin monitoring 30 days after the RB’s approval of the IMP and CIMP does not provide sufficient time.</p> <p>If a plan is submitted as part of a CIMP, at the minimum, the following steps must be followed to begin monitoring after the plan is approved by RB:</p> <ol style="list-style-type: none"> 1. Finalize agreement between all jurisdictions (estimated 3 months assuming all the terms of the agreement other than cost have been agreed upon. Jurisdictions cannot commit to funding until the plan has been approved and finalized) 2. Bring a consultant on board and develop site specific plans for the installation of the monitoring equipment (estimated 6 to 8 months) 3. Obtain various permits, i.e., Corps of Engineers, Fish and Game, Coastal Commission, encroachment, acquire property rights (if some of the monitoring stations cannot be installed/constructed within the existing right of way), identify utility conflicts (estimated 10 to 12 months) 4. Advertise, award and construct/install monitoring stations (estimated 12 to 24 months) <p>If plan is submitted as part of an IMP, at the minimum, the following steps must be taken prior to the start of monitoring after the plan is approved by RB:</p> <ol style="list-style-type: none"> 1. Bring a consultant on board and develop site specific plans for the installation of the monitoring equipment (estimated 6 to 8 months) 2. Obtain various permits, i.e. Corps of Engineers, Fish and Game, Coastal Commission encroachment, acquire property rights (some of the monitoring stations cannot be installed/constructed within the existing right of way), identify utility conflicts (estimated 10 to 12 months) 3. Advertise, award and construct/install monitoring stations (estimated 12 to 24 months)

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
141 (cont.)	Integrated Monitoring Programs Timeline	IV.C.5. [Page E-8]	<p>Regional Water Board has typically allowed 6 months or more to implement approved TMDL Coordinated Monitoring Plans. The monitoring program being required in the draft Permit is much more complex than any TMDL CMP and potentially would also require more coordination amongst Permittees.</p> <p><u>Recommendation</u> Revise to read: <u>Monitoring Implementation of the IMP or CIMP</u> shall commence within 30 days <u>6 months</u> after approval of the IMP or CIMP plan by the Executive Officer of the Regional Water Board.</p>
142	TMDL Monitoring Plans Los Angeles River Watershed – Table E-1	Table E-1 [Page E-12]	<p>The table indicates that the monitoring plan was not submitted for the LA River Nutrients TMDL. Permittees submitted the monitoring work plan on March 23, 2005, which to the best of our knowledge was never approved by the Regional Water Board.</p> <p><u>Recommendation</u> Revise the Date of Final Plan submittal accordingly.</p>
143	Wet Weather Receiving Water Monitoring – Minimum Requirements	VI.C.1.a. [Page E-14]	<p>The permit requirement states that the receiving water shall be monitored a minimum of three times per year for all parameters except aquatic toxicity, which must be monitored at least twice per year, or more frequently if required by applicable TMDL CMPs.</p> <p>Toxicity monitoring for wet weather should be limited to once a year since aquatic toxicity has been well characterized through past monitoring activities under the current permit.</p> <p><u>Recommendation</u> Revise to read: “The receiving water shall be monitored a minimum of three times per year <u>during the wet weather season</u> for all parameters except aquatic toxicity, which must be monitored at least twice <u>once</u> per year, or more frequently if required by applicable TMDL CMPs.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
144	Definition of “Wet Weather” for Receiving Water & Storm Water Outfall Based Monitoring	VI.C.1.b & VIII.B.b. [Page E-14, E-17 & E-18]	<p>“Wet weather” is defined differently for discharges to marine water (0.1” of precipitation determined from at least 50% of LAC-controlled rain gauges in the watershed) and freshwater (20% greater than base flow or as defined by effective TMDLs within the watershed).</p> <p>This will create practical challenges during sampling, as not all rain gauges provide data in real-time, not all streams have gauges, and TMDLs may have different requirements. It is better to limit determination based on a single or representative set of gauges that do provide real-time data, or are based on predicted rainfall.</p> <p>In addition, significant volumes of discharges from potable water suppliers, wastewater reclamation plants, etc., can account for more than the 20% threshold if the river is relatively dry. Conflicts may also arise if different TMDLs have varying requirements for base flow.</p> <p>The definition should be consistent in order to develop consistent monitoring programs with comparable results. Representative samples will not be comparable amongst monitoring programs. Determination of base flow for unmonitored streams may be burdensome. The definition of “wet weather” should also be based on predicted precipitation, not base flow.</p> <p><u>Recommendation</u> Allow Permittees to agree upon and propose one method, consistent with TMDL requirements, to determine sampling trigger conditions for wet weather monitoring to ensure data are comparable across monitoring programs.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
145	Coordinating Receiving Water and Storm water Outfall Monitoring	VI.C.1.c. & VIII.B.1.b.iv; Attachment F – XIII.C.2 [Pages E-15, E-18, & F-18]	<p>The draft Permit proposes to require taking receiving water samples within 6 hours of taking storm water outfall samples. Coordinating trigger conditions between many outfall and receiving water sites will be time consuming and burdensome, requiring complex telemetry and data management systems to ensure that triggering times are coordinated. This condition is too prescriptive.</p> <p>This section could create conflicts if a Permittee decides to submit an IMP and other Permittees within the watershed submitted a CIMP. The trigger for sampling in the receiving water for the IMP and the CIMP could be different and therefore generate inconsistent results.</p> <p><u>Recommendation</u> Eliminate this requirement and allow affected agencies to coordinate trigger conditions between outfall and receiving water sites using an approach that is reasonable and practical. The IMP or CIMP would include recommendations on the start of receiving water monitoring in relation to the start of outfall-based monitoring.</p>
146	Dry Weather Receiving Water Monitoring – Minimum Requirements	VI.D.1.a. [Page E-15]	<p>One of the dry weather monitoring events “shall be during the month with the historically lowest instream flows.” It is unclear how many years of data are required to determine the “historically lowest” month? The sampling point may be in a stream not equipped with stream gauges. If stream gauges records exist, it may be possible to have zero flows.</p> <p><u>Recommendation</u> Remove this requirement. Sampling during dry weather should be just that, “sampling during dry weather” as defined in the MRP.</p> <p>Alternatively, revise as follows: “One of the monitoring events shall be during the month with the historically lowest instream flows for the last 10 years, provided the instream data is available.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
147	Definition of “Dry Weather” for Receiving Water Monitoring	VI.D.1.b.i. & ii. [Page E-15]	<p>“Dry weather” is defined differently for discharges to marine water (less than 0.1” of precipitation on days not less than three days after a rain event of 0.1 inch or greater, determined from at least 50% of LAC-controlled rain gauges in the watershed) and freshwater (less than 20 percent greater than the base flow or as defined by effective TMDLs within the watershed).</p> <p>This will create practical challenges during sampling, as not all rain gauges provide data in real-time, not all streams have gauges, and TMDLs may have different requirements. It is better to limit determination based on a single or representative set of gauges that do provide real-time data, or are based on predicted rainfall.</p> <p>In addition, significant volumes of discharges from potable water suppliers, wastewater reclamation plants, etc., can account for more than the 20% threshold if the river is relatively dry. Conflict may also arise if different TMDLs have varying requirements for base flow.</p> <p>The definition should be consistent in order to develop consistent monitoring programs with comparable results. Representative samples will not be comparable amongst monitoring programs. Determination of base flow for unmonitored streams may be burdensome. The definition of “dry weather” should also be based on precipitation, not base flow.</p> <p><u>Recommendation</u> Allow Permittees to agree upon and propose one method, consistent with TMDL requirements, to determine sampling trigger conditions for dry weather monitoring to ensure data are comparable across monitoring programs.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
148	Receiving Water Monitoring – Aquatic Toxicity & Monitoring Methods	VI.C.1.d.vi & VI.D.1.c.vii, XII.F & G [Page E-15 – E-16, & E-28 – E-30]	<p>As written, the permit requires 2 wet weather and 2 dry weather receiving water monitoring events tested for acute and chronic aquatic toxicity, and for dry weather, once during the month with the historically lowest instream flows.</p> <p>Aquatic toxicity has been well characterized through past monitoring activities, and should not require more than one sampling each for wet and dry weather.</p> <p>In addition, acute toxicity testing requires a minimum exposure of 48 hours, and chronic toxicity testing requires 5 days. A storm event would rarely last beyond several hours, let alone 48 hours or 5 days. Toxicity testing should not be applied to wet weather samples. Should toxicity testing during wet weather still be required, it should be limited to acute toxicity testing.</p> <p><u>Recommendation</u> Remove requirement to conduct toxicity testing for wet weather samples, or limit the testing to acute toxicity. Aquatic toxicity monitoring in the receiving water should be conducted twice per year, once each during wet and dry weather.</p>
149	MS4 Map Elements	VII.A. [Page E-16]	<p>It will be very difficult to fit all the information listed under this section on one map.</p> <p><u>Recommendation</u> The IMP and/or CIMP plan(s) shall include maps of the MS4 to include the following information:</p>
150	MS4 Map Elements – Open Channels and Underground Pipes	VII.A.6. [Page E-16]	<p>The permit requirement is to map the location and length of all open channel and underground pipes 18 inches in diameter or greater. Many of the pipes connecting to FCD catch basins are 18 inches and greater, but would not need to be included on the map to get an accurate layout of the storm drain system.</p> <p><u>Recommendation</u> Revise to read: The location and length of all open channel and underground pipes 18 inches in diameter or greater (<u>except for catch basin connector pipes</u>).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
151	MS4 Map – Major Outfall Catchment Areas	VII.A.10. [Page E-16]	<p>The Permit requires mapping storm drain outfall catchment areas for each major outfall within the Permittee’s jurisdiction.</p> <p>Determination of accurate catchment areas will require extensive review of project files, topography maps, and field surveys to confirm catchment boundaries. It will require more than six (6) months to a year to complete this task.</p> <p><u>Recommendation</u> Provide at least 2 years to complete this requirement</p>
152	Monitoring Locations for Storm Water Outfall Based Monitoring	VIII.A.1. [Page E-17]	<p>As written, the Permit allows for monitoring of continuous flows at manholes and in channels as a discharge from an outfall. We disagree with the concept of treating flows within a channel or manhole as an “outfall” discharge. Such locations should be considered “alternative monitoring locations.”</p> <p><u>Recommendation</u> Revise as follows: “Storm water discharges from the MS4 shall be monitored at <u>major</u> outfalls, <u>and/or alternative monitoring locations, such as manholes</u> or in channels <u>or storm drains</u> at the Permittee’s jurisdictional boundary.”</p>
153	Storm Water Outfall Based Monitoring – HUC 12	VIII.A.2. [Page E-17]	<p>In Part VIII.A, the permit requires monitoring at least one major outfall per sub-watershed (HUC 12). The prescriptive requirement to use HUC 12 subwatersheds is worrisome especially in the urbanized areas of the Greater Los Angeles Area. The USGS developed the HUC system using topography maps, which may not reflect the true drainage patterns in an urbanized setting.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
153 (cont.)	Storm Water Outfall Based Monitoring – HUC 12	VIII.A.2. [Page E-17]	<p>If the Permittee were to use HUC 12 boundaries, is implementing an IMP, and receives flows from other jurisdictions, the Permittee must conduct upstream outfall monitoring. There are a number of jurisdictions which are covered by multiple sub-watersheds; e.g., the Cities of Torrance and Carson are covered by three HUC 12 sub-watersheds (see attached Exhibit L – storm drain unincorporated_6x4 (A1)). A similar situation occurs with several of the approximately 150 unincorporated county islands. These cities and unincorporated county islands receive storm water flows from other jurisdictions. Therefore, based the requirements of this section, if the Permittee is implementing an IMP, each City and unincorporated county island would be required to install six monitoring stations.</p> <p>The HUC 12 boundaries also do not coincide with the Watershed Management boundaries (see attached Exhibit L – storm drain unincorporated_6x4 (A1)). If Permittees submit plans as part of a CIMP, overlaps in boundaries may result in the same outfall monitoring locations being identified in multiple CIMPs submitted by the Watershed Management Groups.</p> <p>It is our assumption that the intention is not for unreasonable, redundant, and ineffective monitoring to be performed as a part of the outfall monitoring program. As written, this section is overly prescriptive and would result in unintended consequences that may be infeasible to implement.</p> <p><u>Recommendation</u> Allow Permittees to design and implement a plan (IMP or CIMP), subject to Regional Water Board Executive Officer approval, that identifies outfall/monitoring locations that are representative of the land uses within the Permittee’s jurisdiction regardless of the number of sub-watersheds.</p>
154	Definition of “Significant Non-Storm Water Discharges”	VII.A.11.e. [Page E-17]	<p>“Significant non-storm water discharges” is not defined on this page.</p> <p><u>Recommendation</u> Add “(as defined in Part IX.B.1.)”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
155	Storm Water Outfall Based Monitoring Frequency	VIII.B.1.a. [Page E-17]	<p>The Permit requires storm water discharges are to be monitored a minimum of three times per year for all parameters except aquatic toxicity, which must be monitored once per year (unless a proximate downstream receiving water monitoring location has not exhibited aquatic toxicity during the past two years).</p> <p>If repeated results from outfall monitoring do not exhibit aquatic toxicity, monitoring of aquatic toxicity should be discontinued.</p> <p><u>Recommendation</u> Revise as follows: “Storm water discharges shall be monitored a minimum of three times per year for all parameters except aquatic toxicity, which shall be monitored once per year (unless a proximate downstream receiving water monitoring location has not exhibited aquatic toxicity during the past two years, <u>or the outfall monitoring location has not exhibited aquatic toxicity for three consecutive years).</u>”</p>
156	Storm Water Outfall Based Monitoring Frequency	VIII.B.1.b.iii. [Page E-18]	<p>The draft Permit states: “Monitoring of storm water discharges shall occur during wet weather conditions resulting from the first rain event of the year and at least two additional wet weather events within the same wet weather season. Permittees shall target the first storm event of the storm year with a predicted rainfall of at least 0.25 inch at a seventy percent probability of rainfall at least 24 hours prior to the event start time. Permittees shall target subsequent storm events that forecast sufficient rainfall and runoff to meet program objectives and site specific study needs. Sampling events shall be separated by a minimum of three days of dry conditions (less than 0.1 inch of rain each day).”</p> <p>These are varying triggers to start monitoring for TMDLs or at the mass emission stations within each watershed. Therefore, data collected from each of these monitoring programs cannot be used for comparison purposes.</p> <p><u>Recommendation</u> Wet weather monitoring should be coordinated amongst outfalls, TMDLs, and mass emissions stations to ensure the results can be comparable.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
157	Storm Water Outfall Based Monitoring – Sampling Methods	VIII.C.2. [Page E-19]	<p>Editorial changes for clarification.</p> <p><u>Recommendation</u> Revise as follows: “If a Permittee is not participating in an IMP or CIMP, the a flow-weighted composite sample of the for a storm water discharge shall be taken with using a continuous sampler. <u>The samples</u> , or it shall be taken as a combination of a minimum of 3 sample aliquots, <u>taken during</u> in each hour of discharge for <u>within</u> the first 24 hours of the discharge or for the entire discharge if the storm event is less than 24 hours. —Each aliquot <u>shall be</u> being separated by a minimum of 15 minutes within each hour of discharge, unless the Regional Water Board Executive Officer approves an alternate protocol.”</p>
158	Non-Storm Water Outfall Based Screening and Monitoring/Screening & Monitoring Plan	IX.A.1. [Page E-20]	<p>Six (6) months is not sufficient amount of time to develop a stand-alone outfall screening and monitoring plan. The same resources will be used to develop the IMPs or the CIMPs and determining how to comply with the IMPs and CIMPs, since there is very little time to transition from the current Permit to the new Permit. The same time should be allotted to prepare the IMP or the CIMP, and the non-storm water outfall based screening and monitoring plan.</p> <p><u>Recommendation</u> Delete the phrase, “or within six (6) months of effective date of this Order.”</p>
159	Definition of Significant Non-Storm Water Discharge	IX.C.1.b. & IX.E.1.d. [Pages E-20 & E-21]	<p>One of the suggested determining criteria for a significant non-storm water discharge is: b. Discharges for which existing monitoring data exceeds non-storm water Action Levels identified in Attachment G of this Order may be considered significant non-storm water discharges.</p> <p>A one-time exceedance of an action level may occur due to a one-time discharge or conditions that may have caused or contributed to that exceedance. Since all major outfalls designated as having significant non-storm water discharges are prioritized for source identification, to minimize chasing after episodic exceedances, allow Permittees to focus resources on persistent discharges and exceedances.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
159 (cont.)	Definition of Significant Non-Storm Water Discharge	IX.C.1.b. & IX.E.1.d. [Pages E-20 & E-21]	<p><u>Recommendation</u> b. Discharges for which existing monitoring data <u>consistently exceeds (three or more consecutive exceedances)</u> non-storm water Action Levels identified in Attachment G of this Order may be considered significant non-storm water discharges.</p>
160	Inventory of MS4 Outfalls with Non-Storm Water Discharges	IX.D.2. [Page E-21]	<p><u>Recommendations</u> d. Description of receiving water at the point of discharge – If the monitoring location is far from the receiving water and does not directly discharge into the receiving water, by CWA definition it would not be an outfall and must be noted as a monitoring location.</p> <p>i. Photographs of significant discharge – If the monitoring location is at a manhole, photographing the significant non-storm water discharge or indicators of discharge will be very costly due to the need for traffic control. It may not be possible to visually confirm the flow and take a photograph.</p> <p>k. All diversions either upstream or downstream of the outfall – Clarify how far upstream or downstream of the major outfall the diversion should be to be for it to be included.</p> <p>l. Observations regarding discharge characteristics – If the monitoring locations are at manholes, visual confirmation of the existence of debris and floatables will be very costly due to the need for traffic control. It may not be possible to make a visual confirmation.</p>
161	Definition of “Other Outfalls”	IX.E.1.b [Page E-21]	<p>“Other outfalls” is used without a definition. “Outfall” is clearly defined per 40 CFR §122.26(b)(9). The Permit should not use “other outfalls” to refer to manholes or other potential points of monitoring.</p> <p><u>Recommendation</u> Conform to the definition of “outfall in 40 CFR § 122.26(b)(9)</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
162	Prioritized Source Identification	IX.E.2 [Pages E-21 – E-22]	<p>"The schedule shall ensure that source IDs are conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this order and 100% of the outfall within 5 years of the effective date of this order."</p> <p>Outfall inventory activities are ongoing and can change over time. For example if 10 outfalls are found in 2012, then by 2017, all 10 should be source ID'ed. Current language doesn't account for outfalls that may have new sources of non-stormwater discharges. For example, 50 outfalls are found in 2017. Does this mean all 50 have to be sourced ID'ed that same year, based on it being 5 years from the effective date of the order?</p> <p><u>Recommendation</u> This provision should be reworded as follows: "The schedule shall ensure that source IDs are conducted for no less than 25% of the outfalls in the inventory within three years of the effective date of this order 25% of outfalls are source ID'ed from date of inventory, and 100% of outfalls within 5 years of the effective date of this order are source ID'ed from date of inventory."</p>
163	Monitoring Non-Storm Water Discharges Exceeding Criteria	IX.G.1. [Page E-22]	<p>Monitoring of significant non-storm water outfall discharges that have significant non-storm water discharges within 90 days of identification or EO approval of CIMP or IMP may not be logistically feasible. The County of Los Angeles has approximately 150 unincorporated County islands, with potentially 4 or more monitoring sites. It is anticipated that some monitoring sites will be in underground storm drains. To measure flows and take samples would require installing auto-samplers, which, similar to outfall monitoring stations, would require additional funds and extended period of time:</p> <ol style="list-style-type: none"> 1. Bring a consultant on board and develop site specific plans for the installation of the monitoring equipment (estimated 6 to 8 months) 2. Obtain various permits (i.e. encroachment) acquire property rights (some of the monitoring stations cannot be installed within the existing right of way), identify utility conflicts (estimated 10 to 12 months) 3. Advertise, award and construct/install monitoring stations (estimated 12 to 24 months)

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
163 (cont.)	Monitoring Non-Storm Water Discharges Exceeding Criteria	IX.G.1. [Page E-22]	<u>Recommendation</u> Allow Permittees to determine a reasonable number of outfalls or alternative monitoring sites with significant non-storm water discharges to monitor each year, cover all watersheds over the Permit term, enough to perform parametric and non-parametric statistical analysis to determine trends. Based on the process and timeline discussed above, allow at least 30 months to begin monitoring.
164	Southern California Stormwater Monitoring Coalition	XI.B.1. [Page E-27]	<u>Recommendation</u> Add San Bernardino as a county storm water agency.
165	Aquatic Toxicity Monitoring Methods	XII.B. [Page E-28]	As currently proposed, aquatic toxicity monitoring must be conducted using flow-weighted composite sampling protocols. This is reasonable and acceptable for wet weather events. For dry weather events, flow rates rarely vary much over time. Requiring flow-weighted composites for dry weather will cause costly and time consuming effort to calculate pace flow volumes for mostly previously unmonitored outfall sites. <u>Recommendation</u> Add language to allow affected agencies to utilize time-weighted composite non-storm water sampling.
166	Standard Monitoring and Reporting Provisions	XIV.A.b.1. [Page E-36]	This period may be extended by request of the Regional Water Board Executive Officer or USEPA at any time. <u>Recommendation</u> This period may be extended by request of the Regional Water Board Executive Officer or USEPA at any time prior to the end of three years.
167	Standard Monitoring and Reporting Provisions	XIV.L. [Page E-39]	The monitoring program required under this Permit would generate a very large amount of data including receiving water, TMDL, and outfall monitoring. To QA/QC, format, and analyze such a large amount of information is not feasible within 90 days of sample collection.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
167 (cont.)	Standard Monitoring and Reporting Provisions	XIV.L. [Page E-39]	<u>Recommendation</u> Allow 180 days.
168	Reporting Monitoring Results in Writing	XIV.M. [Page E-39]	Related to Comment No. 29 in Part V, Receiving Water Limitations, 30 days of the determination and no later than 60 days after the receipt of the monitoring data is not sufficient time to do data analysis and determination. <u>Recommendation</u> Revise to read: “...within 30 90 days of the determination and no later than 60 120 days after receipt of the monitoring data”.
169	Estimated Baseline Percent of EIA	XVII.A.3.b. & XVIII.A.1.a. [Pages E-41& E-42]	The purpose for these requirements is not clear and the burden is substantial. The requirement to determine the EIA baseline and the cumulative change in EIA would be extremely difficult due to the large and highly dense urban area within Los Angeles County. <u>Recommendation</u> Delete these requirements.
170	Effectiveness Assessment of Storm Water Control Measures	XVIII.A.2.a. [Page E-42]	MRP requires a rainfall summary that includes the highest “volume” event expressed in inches/24hrs. Inches of rainfall in a 24-hr period is not a “volume”. Furthermore, a watershed with high imperviousness can generate higher “runoff volumes” with lower “rainfall precipitation” than a watershed with low imperviousness and higher “rainfall precipitation”. <u>Recommendation</u> Since it refers to a Rainfall Summary, revise to “event with the highest precipitation (inches/24hrs).”
171	Effectiveness Assessment of Storm Water Control Measures	XVIII.A.2.b. [Page E-43]	Same as Comment No. 170. Permit refers to total storm volume (in inches). <u>Recommendation</u> Refer to “total storm rainfall precipitation (inches).”

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
172	Receiving Water and Outfall Monitoring	VI.C, D, VIII.A,B, IX.A,B,D,F,G [Pages E-14 – E-24]	<p>There is no consistency in the naming conventions of wet weather monitoring, stormwater monitoring, dry weather monitoring, non-stormwater monitoring. For example, Part VI.C. is called “Minimum Wet Weather Receiving Water Monitoring Requirements” while Part VIII. Is called “Storm Water Outfall Based Monitoring.” It is not clear whether “Wet Weather” and “Storm water” are being used interchangeably. If yes, the Permit should be revised so only one term is used. Otherwise, define both terms. This concern also applies to “Dry Weather” and “Non-Storm Water.”</p> <p><u>Recommendation</u> Be consistent in the use of terminology, or clearly define terms if they are not interchangeable.</p>
173	Rainfall Records	Attachment E	<p>Throughout Attachment E there are references to measuring and reporting rainfall totals (or making monitoring decisions based on rainfall amounts). There are several rain gauges throughout the County. The document does not mention a specific rain gauge. Note that some gauges are manual and would not be able to provide real-time rainfall data, and some have real-time telemetry but may be subject to transmission errors.</p> <p><u>Recommendation</u> If Permittee(s) choose to use rain gauge data to trigger monitoring activities, allow use of rain gauges that are representative of the watershed being monitored.</p>
174	Reference Watershed Flow Duration Curve for Natural Drainage System	XVIII A.2d. [Page E-43]	<p>As written, the Permit requires developing a reference watershed flow duration curve for a natural drainage system and comparing it to a flow duration curve for the subwatershed under current conditions. Stream gage information is necessary to develop a flow duration curve. Stream gauge information is limited to specific locations and is not available for all streams.</p> <p><u>Recommendation</u> Revise as follows: “For natural drainage systems, develop a reference watershed flow duration curve and compare it to a flow duration curve for the subwatershed under current conditions, provided stream gauge information is available.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
175	Identifying Exceedances	XVIII.A.5.a. [Page 44]	All exceedances must be identified in the Integrated Monitoring Compliance Report, even if there is only a single exceedance. <u>Recommendation</u> The reporting threshold should be set higher (e.g., 3 exceedances in a row) to focus on persistent issues, not one time occurrences.
176	Santa Clara River Nitrogen Compounds TMDL	XIX.A.	Since the impairment for the Santa Clara River for Nitrogen Compounds was removed from the 303(d) list, the TMDL should not be included in the MS4 Permit. <u>Recommendation</u> Remove all references to the Santa Clara River Nitrogen Compounds TMDL from the MS4 Permit and all attachments.
177	Santa Monica Bay Nearshore and Offshore Debris TMDL – TMRP Implementation	XIX.B. [Page E-50]	The Permit requires starting the implementation of the Trash Monitoring and Reporting Plan (TMRP) 30 days from receipt of the letter of approval from the Regional Water Board Executive Officer, or the date a plan is established by the Executive Officer. The TMDL itself provides for 6 months, not 30 days, to start implementation, and this requirement is part of the Basin Plan [cq] <u>Recommendation</u> Revise the TMRP implementation start date to match that set within the TMDL.
178	Santa Monica Bay Nearshore and Offshore Debris TMDL – TMRP and PMRP Results Submittal	XIX.B. [Page E-50]	The Permit requires TMRP and PMRP results to be submitted by December 15, 2013, and annually thereafter. The timeline is unreasonable; the December 2013 report will not have any monitoring results. The CIMP is due 12 months after the effective date of this Order, or October 2013. Assuming it takes the Regional Water Board a few months to review and approve the CIMP (by early 2014), it will take 6 months to ideally a year to initiate monitoring. The first monitoring data will not be available until mid-2014 to early 2015. <u>Recommendation</u> Change deliverable to reflect status updates, not only the results of the TMRP and PMRP.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
179	Malibu Creek Watershed Trash TMDL – TMRP Results Submittal	XIX.A. [Page E-51]	<p>The Permit requires TMRP results to be submitted by December 15, 2013, and annually thereafter. The timeline is unreasonable; the December 2013 report will have limited results. Per the TMDL, the CMP is due September 2012. Assuming it takes the Regional Water Board a few months to review and approve the TMRP (by early 2013), and the TMDL provides 6 months to initiate monitoring. The first monitoring data will not be available until mid-2013. Only partial-year results may be reported by December 15, 2013.</p> <p><u>Recommendation</u> Change the TMRP due date to a minimum of one year after the start of monitoring.</p>
180	Reporting Deadlines for San Gabriel River Metals, Puddingstone Reservoir Nutrient, Puddingstone Reservoir Mercury, and Puddingstone Reservoir PCBs and OC Pesticides TMDLs	XIX. [Pages E-65 ~ E-67]	<p>The RWQCB is requesting annual reporting of monitoring results to begin on Dec. 15, 2012. This would only be 4 months after the adoption of the Permit and before the monitoring plan is even required to be submitted to the RWQCB.</p> <p><u>Recommendation</u> An Annual Monitoring Report should not be due until 2 years after the monitoring plan is approved. This allows 6 months to create a scope for monitoring and hire a contractor, 1 year for monitoring, and 6 months to prepare the monitoring report.</p>
181	Submission Deadlines for San Gabriel River Metals and Los Cerritos Channel Metals Implementation Plans	XIX.E & F [Pages E-65 & E-69]	<p>If an IMP or CIMP is due to the RWQCB 9 to 12 months after adoption of the Permit and the Watershed Management Program is due to the RWQCB 1 year after adoption of the Permit, it is infeasible to assume an implementation plan can be developed and delivered to the RWQCB prior to the submittal of the IMP or CIMP and implementing the monitoring program.</p> <p><u>Recommendation</u> Deadlines to develop and submit the Implementation Plan should be proposed in the Watershed Management plan, and after monitoring data is obtained from the IMP or CIMP.. This will allow sufficient time to use the data obtained from the IMP or CIMP to inform the decisions made in the Implementation Plan.</p>
182	Legg Lake Trash TMRP Reports & TMRP Reports MFAC	XIX.E. [Page E-65]	<p>As written, the Permit requires reporting of Permittee(s) compliance with the installation of full capture systems. Per the RWQCB approved TMRP full capture devices or a MFAC program were not required for the responsible parties to be in compliance with the TMDL.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment E. Monitoring and Reporting Requirements			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
182 (cont.)	Legg Lake Trash TMRP Reports & TMRP Reports MFAC	XIX.E. [Page E-65]	<u>Recommendation</u> Remove this reporting requirement from the Permit. Alternatively, revise as follows: "Report compliance with the approved TMRP."
183	Colorado Lagoon Annual Monitoring Reports	XIX.F. [Page E-70]	Providing a date for when the monitoring plan is due is infeasible since there is no way to tell when CLTMP will be approved by the RWQCB. <u>Recommendation</u> An Annual Monitoring Report should not be due until 2 years after the monitoring plan is approved. This allows 6 months to create a scope for monitoring and hire a contractor, 1 year for monitoring, and 6 months to prepare the monitoring report.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
184	Description of the Los Angeles County MS4	II.A. [Page F-4]	<p>The County objects to the description of the MS4 covered under the Permit on F-4 as the “Los Angeles County MS4,” as this title unfairly suggests that the County has principal responsibility for this MS4. This is not the case, as is discussed elsewhere in these comments. It is requested that the MS4s be referred to simply as “MS4s subject to this Order.”</p> <p><u>Recommendation</u> Replace all mentions of “Los Angeles County MS4” in Order with “MS4s subject to this Order.”</p>
185	MS4 in the County	II.A. & Table F-2 [Page F-4 – F-5]	<p>On Page F-5, it is stated that the MS4 in the County is “controlled in large part by the Los Angeles County Flood Control District (LACFCD), among others” In fact, since the MS4 is defined to include not only catch basins, storm drains and channels but also “roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains,” 40 CFR § 122.26(b)(8) (quoted in footnote 1 of the Fact Sheet), the actual extent of the MS4 within the boundaries of the LACFCD is much greater than set forth in Table F-2. For example, the length of the MS4 including streets, storm drains and channels is approximately 31,000 miles. Only about 2,900 miles of that total is comprised of flood control infrastructure operated by the LACFCD, and of that subtotal, the majority of the open channels operated by the LACFCD are in fact “receiving waters” under the Permit and thus not MS4.</p> <p>Also, Table F-2 needs to be corrected to reflect the correct land area for the County, which does not include federal national forest lands or the land areas of incorporated cities.</p> <p><u>Recommendation</u> Delete “controlled in large part by the Los Angeles County Flood Control District (LACFCD), among others” on Page F-5.</p> <p>Table F-2 should be modified in the following ways. First, the entry for LA County in the table should be also for the LACFCD. Second, the area in square miles shown for LA County should be 3,100 minus national forest lands and incorporated areas. Also, there should be a notation that open channels may constitute receiving waters, not part of the MS4.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
186	Regulatory Background	IV.A.1. [Page F-21]	<p>In the first full paragraph on Page F-21, regarding non-stormwater discharges to the MS4, it is stated that the federal stormwater regulations treat storm water and non-storm water discharges “from MS4s” with requirements that “are significantly different.” This is not correct. It is correct that the Maximum Extent Practicable (“MEP”) standard required by 33 U.S.C. § 1342(p)(3)(B)(iii) does not apply to discharges of non-stormwater to the storm sewer, which is subject to 33 U.S.C. § 1342(p)(3)(B)(ii). However, the regulations treat both stormwater and non-stormwater <i>equally</i> once they are in the MS4 and are to be discharged.</p> <p>The Clean Water Act states that the MS4 permit "shall require controls to reduce the discharge of <i>pollutants</i> to the maximum extent practicable . . .". 33 U.S.C. § 1342(p)(3)(B)(iii) (emphasis supplied). The Act does not parse between the discharge of non-stormwater and stormwater. Moreover, the preamble to the federal stormwater regulations also acknowledges that "MEP control measures" would be implemented to address not only pollutants in "stormwater" but also from "non-stormwater discharges."</p> <p>The preamble states:</p> <p style="padding-left: 40px;">[Permittees are required] to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from [such systems] are usually expected to be composed primarily of: (1) Runoff from commercial and residential areas; (2) storm water runoff from industrial areas; (3) runoff from construction sites; and (4) <i>non-storm water discharges</i>. Part 2 of the permit application has been designed to allow [permittees] the opportunity to propose <i>MEP control measures for each of these components of the discharge.</i>"</p> <p style="text-align: center;">55 Fed. Reg. at 48052 (emphasis supplied).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
186 (cont.)	Regulatory Background	IV.A.1. [Page F-21]	<p>This language sets forth USEPA's understanding of the plain language of the Act: "pollutants" must be controlled to the MEP from the MS4 "discharge," not merely stormwater. To correct these errors, we suggest the following changes:</p> <p><u>Recommendation</u> On November 16, 1990, USEPA published regulations to implement the 1987 amendments to the CWA. (55 Fed. Reg. 47990 et seq. (Nov. 16, 1990)). The regulations establish minimum requirements for MS4 permits. The regulations address both storm water and non-storm water discharges from MS4s; however, the minimum requirements for each are significantly different. This is evident from USEPA's preamble to the storm water regulations, which states that "Section 402(p)(B)(3) [of the CWA] requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer ... Ultimately, such <u>non-storm water discharges</u> through a municipal separate storm sewer system must either be removed from the system or become subject to an NPDES permit" (55 Fed. Reg.47990, 47995 (Nov. 16, 1990).⁵ USEPA states that MS4 Permittees are to begin to fulfill the "effective prohibition of non-storm water discharges" requirement by: (1) conducting a screening analysis of the MS4 to provide information to develop priorities for a program to detect and remove illicit discharges, (2) implementing a program to detect and remove illicit discharges, or ensure they are covered by a separate NPDES permit, and (3) to control improper disposal into the storm sewer. (40 CFR § 122.26(d)(2)(iv)(B).) These non-storm water discharges therefore are not subject to the MEP standard.</p>
187	Storm water and Non-Storm water	IV.A.2. [Page F-22]	<p>The statement on Page F-22 that "non-precipitation related discharges are not storm water discharges and, therefore, are not subject to the MEP standard in CWA section 402(p)(3)(B)(iii)" is incorrect. Such discharges are subject to the MEP standard as part of the total discharge, along with stormwater and other flows, from the MS4. Their discharge <i>into</i> the MS4 is subject to the "effectively prohibit" standard set forth in the Act, as the Fact Sheet notes. See preceding discussion.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
187 (cont.)	Storm water and Non-Storm water	IV.A.2. [Page F-22]	<u>Recommendation</u> The last two sentences of the first paragraph on this page should be deleted.
188	Non-Storm Water Regulation	IV.A.3. [Page F-22]	<p>Section IV.A.3 uses language from the preamble the federal stormwater regulations to support an argument that “regulation of non-storm water discharges through an MS4 is not limited to the MEP standard in CWA section 402(p)(3)(B)(iii).”</p> <p>The preamble language quoted in this section defines “illicit discharge.” However, the actual definition of “illicit discharge,” contained in the Code of Federal Regulations, does not support this argument. “Illicit discharge” is defined in 40 CFR section 122.26(b)(2) to be: “Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” (emphasis supplied). The plain language of this regulation controls over ambiguous comments in the Preamble.</p> <p>The use of “through” in the Preamble is ambiguous in this context, since the question being addressed in Section IV.A.3 are discharges “from the MS4.” And, other Preamble language contradicts the conclusions in Part IV.A.3 by indicating that the discharge from an MS4 system is also composed of “non-stormwater discharges.” See Comment No. 186 on Section IV.A.1 of the Fact Sheet, above.</p> <p><u>Recommendation</u> Section IV.A.3 should be deleted.</p>
189	Monitoring of Discharges Permitted under NPDES Permit No. CAG990002	IV.A.5. [Page F-27]	In the last sentence in the first full paragraph on Page F-27, concerning discharges permitted under NPDES Permit No. CAG990002, it is stated that notice to MS4 operators, including the LACFCD, has been added “to ensure that Permittees are aware of the requirement and can monitor the discharge to the MS4 as appropriate.” While a Permittee can voluntarily monitor such discharge, it is the <i>discharger</i> which has the responsibility for monitoring its discharge, not the Permittee.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
189 (cont.)	Monitoring of Discharges Permitted under NPDES Permit No. CAG990002	IV.A.5. [Page F-27]	<u>Recommendation</u> The final clause of this sentence should be modified as follows: “and can monitor the discharge to the MS4 <u>or require monitoring by the discharger</u> , as appropriate.”
190	Technology-Based Effluent Limitations	IV.B. [Page F-30]	On Page F-30, the Fact Sheet states that “Section 301(b)(1)(A) of the CWA and 40 CFR section 122.44(a) require that NPDES permits include technology based effluent limits” and that the MEP standard is the “applicable federal technology based standard that MS4 owners and operators must attain to comply with their NPDES permits.” To avoid confusion, we note that <i>Defenders of Wildlife v. Browner</i> , 191 F.3d 1159 (9 th Cir. 1999) holds that MS4 operators are not required to apply the technology-based requirements of Section 301 of the Clean Water Act. The MEP standard is “technology-based,” but in the sense that it does not require compliance with water quality standards, not in the sense that it is a technology based effluent limit derived from CWA Section 301. Footnote 16 of the Fact Sheet accurately states this distinction.
191	MEP Standard	IV.B. Footnote 12 [Page F-30]	Footnote 12 states, “Note that the MEP standard only applies to storm water discharges from the MS4. Non-storm water discharges are subject to a different standard – specifically, non-storm discharges through the MS4 must be effectively prohibited.” For the reasons discussed above, this statement is wrong based both on the clear language of the CWA and the Preamble to the federal stormwater regulations. <i>All</i> discharges from the MS4 are subject to the MEP standard, not merely stormwater discharges. <u>Recommendation</u> Delete Footnote 12.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
192	Water Quality-Based Effluent Limitations	IV.C. [Pages F-31 – F-34]	<p>With respect to the discussion of the inclusion of WQBELs in the Permit, several points are ignored or mis-stated in the Fact Sheet. First, Section 402(p)(3)(B)(iii) of the CWA provides that an MS4 permit “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” As the Fact Sheet recognizes (on Page F-32), this section does not require the inclusion of WQBELs but makes their inclusion discretionary. Thus, if the Regional Water Board includes WQBELs in the Permit, it must do so in a way in which it does not abuse that discretion.</p> <p>The Fact Sheet states (on Page F-32) that the State Water Board had previously concluded that sole reliance in MS4 permits on BMP-based requirements was not sufficient to ensure the attainment of water quality standards, citing State Water Board Order No. 2001-015. In this order, the State Board actually determined that the iterative process applied to the requirement to comply with water quality standards, and the State Board determined that the permit in question “does not require strict compliance with water quality standards” Order No. 2001-15, at 7. Thus, the Order does not appear to be support for the Fact Sheet’s statement.</p> <p>The Fact Sheet states that “WQBELs are included where the Regional Water Board has determined that discharges from the MS4 have the reasonable potential to cause or contribute to an excursion above water quality standards,” citing 40 CFR § 122.44(d)(1)(i-iii) and 122.44(d)(1)(vii)(B). These regulations, however, do not apply to MS4 permits. Pursuant to 40 CFR § 122.44, an NPDES permittee is required to comply with various provisions under 122.44, including the above-cited regulations, only “when applicable.” (40 C.F.R § 122.44 states that NPDES permits should contain the requirements set forth in that section “when applicable.”)</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
192 (cont.)	Water Quality-Based Effluent Limitations	IV.C. [Pages F-31 – F-34]	<p>Subparagraphs 122.44(d)(1)(i-iii) and (vii)(B) are subsections of subparagraph 122.44(d)(1). Subparagraph 122.44(d)(1) is captioned “Water quality standards and State requirements” and, consistent with that caption, sets forth requirements “necessary to: (1) achieve water quality standards . . .” Pursuant to 33 U.S.C. § 1342(p)(3), however, municipal stormwater discharges are not <i>required</i> to comply with water quality standards. Provisions in subparagraph 122.44(d)(1) are thus not applicable.</p> <p>This result comes from the plain language of the Clean Water Act, as confirmed by the Ninth Circuit in <i>Defenders of Wildlife</i>. 33 U.S.C. § 1342(p)(3) provides in pertinent part:</p> <p style="padding-left: 40px;">(A) Industrial discharges</p> <p style="padding-left: 40px;">Permits for discharges associated with industrial activity shall meet all applicable provisions of this section <i>and Section 1311 of this title</i>.</p> <p style="padding-left: 40px;">(B) Municipal discharge</p> <p style="padding-left: 40px;">Permits for discharges from municipal storm sewers – . . . (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants</p> <p>(emphasis added).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
192 (cont.)	Water Quality-Based Effluent Limitations	IV.C. [Pages F-31 – F-34]	<p>The CWA, in 33 U.S.C. §1311(b)(1)(C), required that NPDES permits include effluent limitations necessary to meet water quality standards no later than July 1, 1977. This provision is not applicable to municipal stormwater permits. As the Ninth Circuit held in <i>Defenders</i>, section “1342(p)(3)(B)(iii) replaces the requirements of § 1311 with the requirement that municipal storm-sewer dischargers ‘reduce the discharge of pollutants to the maximum extent practicable’ . . . In the circumstances, the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).” 191 F.3d at 1165 (emphasis in original).</p> <p>Because MS4 permits are not required to obligate MS4 Permittees to meet water quality standards, the portions of 40 CFR § 122.44 that address compliance with those standards do not apply. Because there is no requirement that an MS4 permit include provisions that require compliance with water quality standards, there is no requirement that WQBELs or TMDL WLAs be included in the MS4 permit. Such WLAs may instead be expressed in the form of BMPs.</p> <p><u>Recommendation</u> Modify the discussion on Pages F-31 to F-34 to correct the existing text to reflect the points made above.</p>
193	2010 USEPA Memorandum	IV.C. Footnotes 24 & 25 [Pages F-33 & F-34]	<p>The Fact Sheet cites, in two footnotes, a 2010 USEPA memorandum which revised an earlier USEPA memorandum, dated November 22, 2002, regarding the inclusions of TMDL WLAs in MS4 permits. Due to substantial objections regarding the conclusions and non-regulatory origin of this memorandum (Exhibit E – NACWA 1-28-11 Municipal Letter to EPA), USEPA issued a letter on March 17, 2011 requesting formal comments on this memorandum and indicating that it would be making a decision by August 2011 whether to affirm the memorandum, revise it or withdraw it. No decision on the memorandum has been made to date. Also, the 2010 USEPA memorandum is a guidance memorandum, which the Agency has stated has no binding effect on any person, including USEPA, states or any regulated party. Given these facts, we believe that this memorandum should not be cited as authority in the Fact Sheet.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
193 (cont.)	2010 USEPA Memorandum	IV.C. Footnotes 24 & 25 [Pages F-33 & F-34]	<u>Recommendation</u> Remove citation to the 2010 memorandum in Footnote 24 and delete Footnote 25.
194	Rationale for Receiving Water Limitations	V. [Pages F-35 – F-38]	<p>On Pages F-35 to F-38, the Fact Sheet sets forth a rationale for the receiving water limitations (“RWL”) provisions in Part V of the Order. There are a number of statements in this rationale which require correction. The Fact Sheet cites authorities that are not applicable to MS4 permits or stand for different propositions than as cited in the Fact Sheet.</p> <p>It is first noted that the Phase II Stormwater Regulations final rule is cited. This rule does not cover large and medium MS4s and thus is not authority for the Order.</p> <p>While the attainment of water quality standards is an appropriate goal for any MS4 permit, the means of attempting to attain those standards, and the point of compliance for the Permittees in the Permit, is critical, as demonstrated by the Ninth Circuit’s decision in <i>Natural Resources Defense Council v. County of Los Angeles</i>, 673 F.3d 880 (9th Cir. 2011), <i>cert. granted</i>, ___ U.S. ___ (June 25, 2012). In that decision, the Ninth Circuit disregarded language in Order No. 01-182 providing that the means of complying with Part 2.2 of that permit, which prohibits discharges that “cause or contribute to violations of water quality standards,” was to engage in the iterative process set forth in Part 2.3. The Ninth Circuit instead held that each subsection of Part 2 of the Permit was to be enforced separately, including Part 2.2 and its “cause or contribute” prohibition.</p> <p>We note that the court’s opinion ignored the statement of former Board Chair and current Board Member Francine Diamond (see Exhibit M - RWQDB Francine Diamond Letter 1-30-2002) and the sworn written testimony of then-Executive Officer Dennis Dickerson that Part 2.2 was to be read in conjunction with Part 2.3, and that exceedances of water quality standards would not per se subject the Permittees to liability under the Permit and the CWA.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
194 (cont.)	Rationale for Receiving Water Limitations	V. [Pages F-35 – F-38]	<p>The Fact Sheet (at Page F-35) incorrectly asserts that the Order, “consistent with CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1), ... includes a provision stating that discharges from the MS4 that cause or contribute to an exceedance of receiving water limitations are prohibited.” This section of the CWA does not require such language, but only that pollutants discharged from the MS4 be controlled to the MEP. Also, 40 CFR § 122.44(d)(1) does not apply to MS4 permits, as noted in the Comment No. 192 regarding the implementation of TMDLs through WQBELs.</p> <p>The Fact Sheet further states on Page F-35 that the “cause or contribute” language is “in accord with the State Water Board’s finding in Order WQ 98-01 . . .” In that order, however, the State Water Board upheld RWL permit language that expressly made compliance with the water quality standards subject to compliance with a BMP-based approach. Order WQ 98-01 at 9-10. The RWL language in that Permit, unlike the language proposed for the Order, was truly iterative, expressly stating that Permittees would “not in violation of this provision [prohibiting exceedances of water quality objectives] so long as they are in compliance with” an iterative process that requiring evaluation of a drainage area management plan. Order WQ 98-901 at 6-7.</p> <p>The Fact Sheet also states on Page F-35 that USEPA Region IX, in a “series of comment letters” (the only one cited in the Fact Sheet dates from January 21, 1998), contended that “MS4 discharges must meet water quality standards.” The comment letter in question, however, was sent <i>before</i> the Ninth Circuit’s decision in <i>Defenders of Wildlife, supra</i>. In <i>Defenders</i>, the Ninth Circuit expressly ruled that MS4 dischargers were <i>not</i> required to meet such water quality standards.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
194 (cont.)	Rationale for Receiving Water Limitations	V. [Pages F-35 – F-38]	<p>While the Fact Sheet states (Page F-36) that each of three provisions in the Permit’s RWL language “are independently applicable” (and thus enforceable, <i>see NRDC</i>, 673 F.3d at 897), this very fact makes the Permit’s present RWL language untenable for Permittees. As demonstrated by the <i>NRDC</i> litigation itself, which was brought against the County, the LACFCD and in a separate action, the City of Malibu, Permittees covered by the Order would have no protection against another citizens’ suit (or possible enforcement action by the Regional Water Board) for exceedances of water quality standards not subject to the TMDLs, exceedances that will occur as a result of the extreme variability and uncontrolled nature of municipal storm and non-stormwater discharges.</p> <p>The statement (on Page F-37) that the Regional Water Board “will work with the MS4 Permittees through the process outlined in Part V.A.3 in this Order” or through the watershed management programs which mirror “the iterative process in Part V.A.3) so that additional controls are implemented in an expeditious manner to address exceedances of receiving water limitations that are caused or contributed to by discharges from the MS4” thus, unfortunately, provides no comfort or assurance to Permittees. Permittees still are faced with a condition requiring strict compliance with water quality standards and which can be enforced in citizens’ suits with the potential for civil penalties, the payment of attorneys’ fees and the award of injunctive relief, relief that might conflict with the requirements of the Order.</p> <p>The County is not looking for a “safe harbor,” and the Order’s multiple compliance provisions are fully applicable and subject to enforcement if they are violated or ignored. The County is, however, requesting RWL provisions that do not leave them, and every other Permittee, in potential violation of the Order (and the CWA) the day that the Order is issued.</p> <p><u>Recommendation</u> We request that this section of the Fact Sheet be modified to reflect these comments and that the alternative approaches to the current RWL language in Part V of the Permit discussed elsewhere in these comments be incorporated in the Order.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
195	Watershed Management Program – Minimum Control Measures	VI.B. [Page F-42]	The listing of the minimum control measures that can be modified through the watershed management program omits the Planning and Land Development Program, which is inconsistent with Part VI.C.3.b.iv. on page 50. <u>Recommendation</u> Add “Planning and Land Development Program” to the list.
196	Timelines for Implementation	VI.C.1.b. [Page F-45]	The fact sheets states that “All obligations continue the implementation of existing MS4 program requirements.” It is our understanding that the intent of this sentence is to indicate that those existing MS4 program requirements are to continue to be implemented without disruption. <u>Recommendation</u> Rephrase the sentence to clearly state the intent.
197	PIPP Implementation	VI.C.4.c. [Page F-55]	Reference to a County-sponsored PIPP is not consistent with the text in Part VI.D.4.b.i.(1). <u>Recommendation</u> For consistency, revise to read “County-sponsored wide PIPP”
198	Development Construction Program Implementation – inspection frequency	VI.C.7.d. [Page F-72]	The language refers to a requirement to inspect during five phases of construction. This requirement had been included in the staff working proposal but was modified in the draft tentative order and should also be revised in the fact sheet. <u>Recommendation</u> Revise as follows: “The Permittee is responsible for conducting inspection and enforcement of erosion and sediment control measures at specified times and frequencies during construction, including prior to land disturbance, during grading and land development, during streets and utilities activities, during vertical construction, and during final landscaping and site stabilization.”

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
199	Development Construction Program Implementation – training and educational material	VI.C.7.d. [Page F-73]	<p>The language refers to a requirement development and distribution of training and educational material to the development community. This requirement had been included in the staff working proposal but was removed from the draft tentative order and should no longer be referenced.</p> <p><u>Recommendation</u> Delete the following: “In addition, the Permittee must develop and distribute training and educational material and conduct outreach to the development community. To ensure that the construction program is followed, construction operators must be educated about site requirements for control measures, local storm water requirements, enforcement activities, and penalties for non-compliance.</p>
200	Total Maximum Daily Load Provisions	VI.D. [Pages F-80, F-81 & F-99]	<p>The Fact Sheet (Page F-80) states that “Federal regulations require that NPDES permits must include conditions consistent with the assumptions and requirements of any available waste load allocation,” citing 40 CFR § 122.44(d)(1)(vii)(B). As discussed elsewhere, this regulation does not apply to NPDES permits for municipal stormwater sewers. Similarly, the statement that an “NPDES permit should incorporate the WLAs as numeric WQBELs, where feasible,” does not follow from the CWA or the regulations. See previous discussion. A similar comment is made with regard to the statement on Page F-99 regarding WQBELs being consisting “with the assumptions and requirements of any WLA” and the citation of 40 CFR § 122.44(d)(1)(vii)(B) as support. We also note that in footnote 37, the 2010 USEPA memorandum is cited. For the reasons cited above, it should not be used as authority in the Fact Sheet.</p> <p><u>Recommendation</u> On Page F-80, delete the second sentence in the third paragraph on the page. Also on Page F-80, delete the final paragraph, which continues onto the top of Page F-81. On Page F-81, delete footnote 37. On Page F-99, delete first full sentence on the page, beginning with “WQBELs must be consistent”</p>
201	Total Maximum Daily Loads	Attachment F [Page F-80]	<p><u>Recommendation</u> Refer to the attached file titled “Excerpts Relevant to TMDLs.”</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
202	Reopener and Modification Provisions	VI.E.4. [Page F-108]	<p>The Fact Sheet cites various CFR sections as the basis for reopener and modification provisions in the Permit. As reflected in Order No. 01-182 and the requirements of California law, the reopener and modifications requirements are also subject to California law, including the Water Code and the provisions of the Administrative Procedure Act applicable to adjudicatory hearings. Additionally, the “minor modification” provisions of the regulations also allow non-hearing modifications for other items, the relevant one being alterations of interim compliance dates.</p> <p><u>Recommendation</u> The first two sentences under subdivision 4 should read as follows:</p> <p>These provisions are based on 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64, <u>the provisions of the California Water Code and the Administrative Procedure Act in the Government Code applicable to adjudicative hearings and implementing regulations</u> and are also consistent with Order No. 01-182. The Regional Water Board may reopen the Permit to modify Permit conditions and requirements, as well as revoke, reissue, or terminate in accordance with federal regulations <u>and California law and regulations.</u></p>
203	Socioeconomic Considerations	XIV. [Page F-131]	<p>The Fact Sheet states that “federal law requires MS4 permits to include requirements to effectively prohibit non-storm water discharges into the storm sewers, in addition to requiring controls to reduce the discharge of pollutants in storm water to the maximum extent practicable and other provisions that the agency determines are necessary for the control of pollutants in MS4 discharges.” As noted throughout these comments, the MEP standard applies to “pollutants” discharged from the MS4, not only stormwater.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
203 (cont.)	Socioeconomic Considerations	XIV. [Page F-131]	<p><u>Recommendation</u> Correct the language in the Fact Sheet as follows:</p> <p>Among other requirements, federal law requires MS4 permits to include requirements to effectively prohibit non-storm water discharges into the storm sewers, in addition to requiring controls to reduce the discharge of pollutants in storm water to the maximum extent practicable and other provisions that the agency determines are necessary for the control of pollutants in MS4 discharges.</p>
204	Factors Affecting Pollutant Concentrations in MS4 Discharges	XIV.C. [Page F-135]	<p>In the Water Code § 13241 analysis, and the discussion of water quality conditions that could reasonably be achieved (Page F-135), it is stated that the six factors “generally accepted” to affect pollutant concentrations in MS4 discharges were land use, climatic conditions, seasons, percentage impervious, rainfall amount and intensity, runoff amount and watershed size. The County also believes that additional factors, including motor vehicle operation and aerial deposition create pollutant loadings and influence pollutant concentrations.</p> <p><u>Recommendation</u> The Fact Sheet should be modified as follows:</p> <ul style="list-style-type: none"> • Land use • Climatic conditions • Season (i.e. for southern California, dry season and winter wet season) • Percentage imperviousness (in particular, “effective impervious area” or “EIA”) • Rainfall amount and intensity (including seasonal “first-flush” effects) • Runoff amount • Watershed size • <u>Motor vehicle operation</u> • <u>Aerial deposition</u>
205	Funding Sources – Assembly Bill 2554	XIV.D. [Pages F-142 – F-143]	See the Comment No. 65 in the comments submitted by the Los Angeles County Flood Control District.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment F. Fact Sheet			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
206	Unfunded Mandates	XV. [Pages F-146 – F-149]	<p>The discussion of whether the Permit represents an unfunded state mandate, set forth on Pages F-146-149 of the Fact Sheet, does not belong there. As set forth in greater detail in the Comment No. 12 on the Findings (Part II.Q,) the Regional Water Board does not have jurisdiction to determine the issue of whether the Permit represents an unfunded mandate; the Legislature specifically placed that jurisdiction exclusively in the hands of the Commission on State Mandates. Moreover, as set forth in the Comment No. 12, the analysis of why the Permit is not an unfunded state mandate is deficient.</p> <p><u>Recommendation</u> Delete this section of the Fact Sheet.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G - Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
207	General – Setting Non-Storm Water Action Levels (NALs)	[Pages G-1 ~ G-16]	<p>The proposed non-storm water action levels are the same as water quality objectives. Because the purpose of action levels is to identify the worst problems and prioritize actions, these action levels should be set at a higher level.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>
208	General – Pollutants with Non-anthropogenic Sources	[Pages G-1 ~ G-16]	<p>Pollutants that are known to be dominated by, or heavily contributed by, natural sources should not have as action levels: e.g., Sulfate, Cyanide, Selenium, Nickel, Cadmium, Aluminum, TSS, pH, etc.</p> <p><u>Recommendation</u> Remove Action Levels for these pollutants.</p>
209	General – Setting Municipal Action Levels (MALs)	[Pages G-17 ~ G-18]	<p>The Municipal Action Levels are currently set at the 75th (upper 25th) percentile values (based on the Correction to Attachment G issued by the Regional Water Board on June 19, 2012). We appreciate this correction; however MALs should be set using the 90th (upper 10th) percentile values to allow for true prioritization of follow-up actions, which is the approach used in the San Diego Permit.</p> <p><u>Recommendation</u> Set MALs using the 90th percentile values.</p>
210	MAL for pH	VIII. [Page G-17]	<p>The MAL for pH is set at 7.7; allowable values for pH have always been set as a range.</p> <p><u>Recommendation</u> Set the MAL for pH to values outside of range 6.0–9.0.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G - Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
211	Criteria for Submitting a MAL Action Plan	VIII [Page G-17]	<p>The draft Permit states: “Beginning Year 3 after the effective date of this Order, each Permittee shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2013 Annual Report) to the Regional Water Board EO, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4.”</p> <p>If the effective date of the Order is October 2012, October 2012 would be the beginning of Year 1, and October 2013 would be the beginning of Year 2, not Year 3. The MAL Action Plan should be submitted with the December 15, 2014 Annual Report.</p> <p>In addition, the time period for determining the “running average” should be clarified.</p> <p><u>Recommendation</u> Revise the due date for submission of the first MAL Action Plan to December 15, 2014. Clarify the time period used for determining the MAL “running average”.</p>
212	Shellfish Criteria for Total Coliform Bacteria NAL	Tables G-3, G-4, G-7, G-8, G-11, G-15, G-16, G-20, G-23, & G-24 [Pages G-2 ~ G-14]	<p>Non-Storm Water Action Levels for Total Coliform Bacteria currently are set to the water quality objectives for shellfish harvesting. Because the purpose of action levels is to identify the worst problems and prioritize actions, these action levels should be set to a higher level.</p> <p>Most if not all watersheds within the greater Los Angeles Region are impaired for bacteria. Available monitoring data show the REC-1 criteria for Daily Maximum, 10,000/100ml, are already frequently exceeded. Setting the NALs even lower would be counter to the intent of prioritization.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment G - Non-Storm Water Action Levels and Municipal Action Levels			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
213	Drinking Water (Municipal and Domestic Supply [MUN]) Criteria for Methylene Blue Active Substances (MBAS), Nitrite, Turbidity, and Aluminum	Tables G-1, G-3, G-5, G-6G-7, G-21, G-22, & G-23 [Pages G-2 ~ G-12]	<p>Non-Storm Water Action Levels for MBAS, Nitrite, Turbidity, and Aluminum currently are set to the water quality objectives for drinking water (MUN). Because the purpose of action levels is to identify the worst problems and prioritize dry-weather monitoring of outfalls and taking appropriate follow-up actions, these action levels should be set to a higher level. Drinking water (end-of-tap) criteria should not be used as end-of-pipe criteria or as action levels for the MS4. Setting the NALs even lower is counter to the intent of prioritization.</p> <p><u>Recommendation</u> Review available monitoring data to set 90th percentile values as action levels.</p>
214	General	Tables G-2, G-6, G-10, G-14, & G-22 [Pages G-2 ~ G-12]	<p>There are several references to "Table H-#" throughout the attachment. Correct as necessary.</p> <p><u>Recommendation</u> Correct references to "Table H-#" to "Table G-#."</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachment H. Bioretention/Biofiltration Design Criteria			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
215	Bioretention/Biofiltration	Sections 1, 2 & 3) [Pages H 1-2]	<u>Recommendation</u> Provide a sketch to readily show the various features of Bioretention / biofiltration areas described in words in numbered Sections 1,2 and 3 of this attachment.
216	Minimum Infiltration Rate of 0.15"/hour	Section 4.a [Page H-2]	When calculating the capacity of an infiltration system,...in-situ soil or amended on-site soils have a demonstrated infiltration rate under saturated conditions of no less than <u>0.15 inch/hour</u> The industry standard for infiltration rate is 0.5"/hour. <u>Recommendation</u> Increase the minimum infiltration rate to 0.5"/hour.
217	Minimum design flow	Section 4.b [Page H-2]	Bioretention BMPs shall be designed to accommodate the minimum <u>design flow at a surface loading rate</u> of 5 inches per hour and no greater than 12 inches per hour. It is unclear what is meant by surface loading rate. <u>Recommendation</u> Provide a definition of surface loading rate. Does this mean the planting media must percolate within the 5-12 inch/hour range or that the drainage system must be designed so as to provide a inflow velocity within that range?
218	Total Volume	Section 4.b [Page H-2]	b. Bioretention BMPs shall be designed to accommodate the minimum design flow at a surface loading rate of 5 inches per hour and no greater than 12 inches per hour, and shall have a <u>total volume , including pore spaces and pre-filter detention volume</u> of no less than the SWQDv. This phrase states that "total volume"= pore spaces+ pre-filter detention. This should also include above ground storage. <u>Recommendation</u> The sum should be "total volume"= pore spaces + pre-filter detention + above ground storage
219	Planting Media	Section 6.b [Page H-3]	<u>Recommendation</u> This Section should more clearly define the planting media as a percentage mix of sand and compost by weight or volume.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
220	TMDL Reopeners	TMDL Provisions	<p>As previously commented, several TMDLs, such as the Machado lake Nutrients TMDL, provide for reconsideration prior to final compliance deadlines. The tentative order proposal does not reflect this.</p> <p><u>Recommendation</u> For consistency, statements should be added to the TMDL provisions to reflect that the Regional Water Board will reconsider those TMDLs prior to their final compliance deadlines.</p>
221	Santa Clara River Nitrogen Compounds TMDL	Table K-1, Attachment L – A.	<p>Since the impairment for the Santa Clara River for Nitrogen Compounds was removed from the 303(d) list, the TMDL should not be included in the MS4 Permit.</p> <p><u>Recommendation</u> Remove all references to the Santa Clara River Nitrogen Compounds TMDL from the MS4 Permit.</p>
222	Los Angeles County is not a Permittee for the Dominguez Channel Toxics TMDL	Tables K-4, K-5, and K-6	<p>The County of Los Angeles should be removed as a Permittee subject to the provisions of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL.</p> <p>Attachment K, Tables K-4, K-5, and K-6, identify the County as Permittees subject to the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. This designation violates the Amended Consent Decree (Exhibit N –Amended Consent Decree) entered on August 24, 1999 by the United States District Court in <i>United States v. Montrose Chemical Corporation, et al.</i>, Case No. CV90-3122-AAH (JRx) (“Amended Consent Decree”).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
223	Los Angeles County is not a Permittee for the Dominguez Channel Toxics TMDL	Tables K-4, K-5, and K-6	<p>In 1999 the United States and the State of California settled a lawsuit with local governmental entities over the environmental condition of the Dominguez Channel and the Los Angeles and Long Beach Harbors. The lawsuit was brought by the United States on behalf of the United States Environmental Protection Agency, the Department of the Interior and the National Oceanic and Atmospheric Agency, and by the State of California on behalf of the State Lands Commission, the Department of Fish & Game, the Department of Parks and Recreation, the Department of Toxic Substances Control and the Los Angeles Regional Water Quality Control Board.</p> <p>The settlement is set forth in the Amended Consent Decree. The County and the LACFCD are two of the parties to this settlement. The Regional Water Board also was a party, with the Executive Officer signing the Amended Consent Decree on behalf of the Regional Water Board.</p> <p>The Amended Consent Decree resolved all liability of the settling local governmental entities for all natural resource damages with respect to the "Montrose NRD Area" and all response costs incurred in connection with the "Montrose NPL Site" (Amended Consent Decree, p. 19). The Montrose NRD Area was defined to include the Los Angeles and Long Beach Harbors (Amended Consent Decree, ¶ 6.J). The Montrose NPL Site was defined to include the Torrance Lateral, the Dominguez Channel from Laguna Dominguez to the Consolidated Slip, and that portion of the Los Angeles Harbor known as the Consolidated Slip (Amended Consent Decree, ¶ 6.I.).</p> <p>Under the Amended Consent Decree, the Regional Water Board explicitly agreed that, except for certain circumstances not applicable here, the Regional Water Board would not take any civil or administrative action against any of the settling local governmental entities for any civil or administrative liability for natural resource damages (Amended Consent Decree, ¶ 11). Natural resource damages were defined to include loss of use, restoration costs and resource replacement costs, among other costs (Amended Consent Decree, ¶ 6.L).</p>

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
223 (cont.)	Los Angeles County is not a Permittee for the Dominguez Channel Toxics TMDL	Tables K-4, K-5, and K-6	<p>The Regional Water Board also agreed that, except for certain circumstances not applicable here, the Regional Water Board would not take any civil or administrative action against any of the settling local governmental entities, to compel response activities or to recover response costs in connection with the Montrose NPL site (Amended Consent Decree, ¶ 17). Response costs were defined to include all costs of response as provided in 42 U.S.C § 9607(a)(1-4)(A) and as defined by 42 U.S.C § 9601(25). (Amended Consent Decree, ¶ 6.M). These response activities and costs included activities to remove hazardous substances from the environment, to monitor, assess, and evaluate the release or threat of release of hazardous substances (see 42 U.S.C. §9601(23)), and actions consistent with a permanent remedy such as diversions, dredging and excavations (see 42 U.S.C. §9601(24)).</p> <p>The Permit's imposition of obligations on the County to comply with the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Water Toxic Pollutants TMDL, including the requirement to comply with the concentration-based effluent limitations for pollutant concentrations in the sediment, violates the Amended Consent Decree. Under the Amended Consent Decree, the Regional Water Board has explicitly agreed that it will not require the County and LACFCD to take these and other actions (Amended Consent Decree, ¶¶ 11 and 17).</p> <p><u>Recommendation:</u> Delete the designation of the County as subject to the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL in Attachment K, Tables K-4, K-5, and K-6.</p>
224	Reach Designations	Attachment L	Both USEPA and Los Angeles Region's Basin Plan are used for reach designations. To be consistent, continue to use the reach designations as shown in the TMDL documents that have been issued.

County of Los Angeles Comments
Draft Tentative Order No. R4-2012-XXXX, NPDES No. CAS004001

Attachments K-R. Total Maximum Daily Loads Provisions			
Comment #	Permit Element/Issue/Concern	Location in Draft Tentative Order	Comment/Recommendation
225	Exceedance Day Values	Attachment M [Page M-5]	<p>The data under item c on Page M-5 is from the original Santa Monica Bay Beaches Bacterial TMDL. However, the Revised Tentative Basin Amendment for this TMDL has different allowable exceedance day values.</p> <p><u>Recommendation</u> Update the values to be consistent with the Revised Tentative Basin Amendment for the Santa Monica Bay Beaches Bacterial TMDL.</p>
226	Machado Lake Trash TMDL	TMDL Provisions for the Dominguez Channel [Page N-2]	<p>As previously commented, the tentative order assigns a numerical value for trash generation rate of 5334 gallons of uncompressed trash per square mile per year. The Basin Plan Amendment does not use this method.</p> <p><u>Recommendation</u> The WQBELs should be consistent with those in the adopted TMDL that are expressed as a percent reduction from baseline and not assigned as individual baselines to each City and the County. As discussed in its approved Trash Monitoring and Reporting Plan, the County of Los Angeles intends to comply with this TMDL by installing full capture devices consistent with Part VI.E.5.b. of the tentative order proposal.</p>
227	San Gabriel River Metals and Impaired Tributaries Metals and Selenium TMDL	TMDL Provisions for the San Gabriel River [Page P-1]	<p>As previously commented, it is unclear where the values in the table under Section E.1.b for wet weather water quality based effluent limitations come from. They do not match the approved TMDL in units or values.</p> <p><u>Recommendation</u> Clearly explain why there is a difference in the values. If it is merely a conversion, then explain such. If it is not a conversion, then provide the justification for adjusting the values.</p>

Exhibits for LA County Comments on Draft Tentative Order

- Exhibit A - Transmittal & Comments on TMDL and Monitoring Sections (Workshop 1-23-12).pdf
- Exhibit B - MCM Working Proposal Comments - County of LA 4-12-2012.pdf
- Exhibit C - RB MCM Draft Language Comments FINAL (Discharge Prohibitions).pdf
- Exhibit D - LA County and LACFCD Comments on Working Proposals [RWL-TMDL-WMP 5-14-12].pdf
- Exhibit E - NACWA 1-28-11 Municipal Letter to EPA & 3-30-12 EPA Response.pdf
- Exhibit F - LACMS4 Redlined TMDL Excerpts 20Jul2012Rev.docx
- Exhibit F - LACMS4 Redlined TMDL Excerpts 20Jul2012Rev.pdf
- Exhibit G - State Water Board Blue Ribbon Panel Final Report.pdf
- Exhibit H - Outfall Data Summary.pdf
- Exhibit I - Stockton Summary 2012-07-20.pdf
- Exhibit J - CASQA proposal - Receiving Water Limitation Provision to Stormwater NPDES Permits.pdf
- Exhibit K - TMDLs into SW Permits Review 20Jul12.pdf
- Exhibit L - storm drain unincorporated_6x4 (A1).pdf
- Exhibit M - RWQDB Francine Diamond Letter 1-30-2002.pdf
- Exhibit N - Amended Consent Decree.pdf
- Exhibit P - LAR Nutrients Transmittal & Monitoring Work Plan.pdf
- Exhibit Q - Comments TM LACMS4 TMDLs 21Jul2012.pdf
- Exhibit R - TMDL Compliance Assessment 21Jul2012.pdf
- Exhibit S - Clearer Structure, Cleaner Water (Little Hoover).pdf
- Exhibit T - nrc_stormwaterreport.pdf
- Exhibit U - Smail et al 2012_EST_Metal contamination in Bight after CWA implementation.pdf



City of Malibu

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July 23, 2012

Sent via email to LAMS42012@waterboards.ca.gov

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RE: City of Malibu Comments – Tentative Order No. R4-2012-XXXX, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Los Angeles County Flood Control District

Dear Ms. Purdy:

The City of Malibu thanks the Los Angeles Regional Water Quality Control Board and staff (Regional Board) for allowing the opportunity to review and comment on the subject proposed tentative order municipal stormwater permit for the Los Angeles region (Permit). The ongoing dialogue, workshops and public comment periods that were provided were much appreciated. However, it is important to note that the 45-day review period provided was inadequate for the level of review necessary for a permit of such critical importance. Local stormwater managers have an obligation to inform other municipal departments, legal counsel, city management and elected officials of the fiscal impact of this draft order. The 45-day review period does not afford adequate time to properly evaluate the Permit, assess its financial, legal and resource implications, and inform city management and elected officials. Additionally, many small permittee cities (like Malibu) have small staffs, often with only one staff member available to function on stormwater permit administration. So, while the Regional Board has provided opportunities for comment and public workshops on some preliminary sections of the Permit, these activities were not going on in isolation. In the past few months, one staff member has also been responsible for preparing significant technical comments on the recent TMDL reopeners and responding to the Regional Board's Request for Information on alleged bacterial exceedances, while also preparing the City's annual stormwater reports, which are due September 4, 2012 (two days before this proposed hearing). While the City appreciates the access and opportunity that Board staff provided to the permittees during the time that this draft permit was under development, and the opportunity to provide input, significant issues remain unresolved and many more have become evident now that this draft permit has been released in its entirety. A 45-day review period for a 500-page permit is hardly adequate and has not provided us enough time to fully review and digest all the interrelated parts of this permit, consider the implications and costs of the proposal and provide complete and comprehensive comments.



The City joined the Los Angeles Permit Group's (LA Permit Group) letter dated July 2, 2012 requesting an extension to the review period. The City was disappointed to hear the extension was not granted. The City therefore reiterates its request for additional time and urges the Regional Board to review the comments provided by all of the permittees, issue a revised draft permit, and accept additional comments on the revised draft before adopting a final permit. The costs are too high to rush through this process with so many questions left unanswered.

The City of Malibu, as a participant in the LA Permit Group, supports and joins in the LA Permit Group's letter reviewed by the City that is to be submitted by the LA Permit Group today, July 23, 2012, and incorporates those comments herein by reference. Those comments are a balanced compromise of the various permittees' views and are representative of the collective concerns of the permittees. The negotiations and consensus building within that group have been vital to this process and yield workable recommendations for this complex permit. The City encourages the Regional Board to consider the comments in that letter and adjust the proposed permit language accordingly. The City of Malibu would also like to emphasize the following additional comments:

1. The Receiving Waters Limitation language must be amended

The Receiving Water Limitations language, beginning on page 37 at Section V, must be amended. As written, the City can be deemed in violation of the Permit and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the Regional Board requires cities to implement an iterative process to improve BMPs to address exceedances, the City is still in violation of the Permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.

Previously, municipal stormwater permittees had understood that the receiving water limitations language, in conjunction with Board Policy (WQ 99-05), established an iterative, adaptive management approach as a basis for permit compliance. However, since the Permit language does not actually say that the permittee is in compliance while engaging in the adaptive management process, a federal court has determined that the permit violation still exists while the permittee is taking actions to address the problem.

On July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found that the Defendant County had violated the Receiving Water Limitations, despite its compliance with the adaptive management process. The Court said that the obligation to not cause or contribute to violations of receiving water limitations is separate and distinct from the obligation to participate in adaptive management. Thus, a municipality is in violation of the Permit if its discharges cause or contribute to an exceedance of a water quality standard, even while improving its management practices and control measures. This is a fundamental change in interpretation of policy. The Court's decision also contrasts sharply with the Board's own understanding, as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated the collective understanding that a violation of the permit would occur only when a municipality fails to engage in a good faith effort to implement the iterative process to correct the harm.

An MS4 permittee should not automatically be in violation of the Permit if there is an exceedance; the exceedance may not have even been caused from an MS4 discharge. The Permit must acknowledge that MS4 discharges are not the only source of pollutants in the water and regulate accordingly. If monitoring demonstrates that a particular compliance strategy is not working, through no fault of the discharger, then the discharger must have time to identify and implement a new strategy before being held liable for water quality alterations that may be beyond its control.

To address this problem, the City recommends that the proposed CASQA language submitted by the LA Permit Group be used in lieu of the current language. This language resolves the problems listed above because it explicitly provides that if a permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the permittee shall be deemed in compliance with the discharge prohibitions while it undertakes its adaptive management strategies, unless it fails to report and implement its compliance strategy.

2. Section I Table 2. Facility Information

Please modify the City's Facility Contact Name and Email to: Jennifer Brown, jbrown@malibucity.org, and the City Hall address to 23825 Stuart Ranch Road, Malibu, CA 90265.

3. Section III.A.2.a.ii. Conditional Exemptions from Non-Storm Water Discharge Prohibition on Pg. 28 Footnote 10

This footnote states that, "Permittees shall require that the following information is maintained by the water suppliers ..." The City requests that this requirement be deleted. The City has no authority over the Water District. Such a requirement is more appropriately placed on water providers by the State. Further, the Permit should not place requirements in footnotes, which are meant for clarifications, citations and references applicable to the main text. If the requirement is not deleted, the requirement must be properly placed within the Permit requirements in the text of the page.

4. Section III.A.4.f. Permittee Requirements on Pg. 31

This condition prohibits discharge "from" MS4. This language should be changed to "to" in order to keep it consistent with Part III.A.4.d.i.

5. Section III.A.5 on Pg. 31

This condition regarding conditionally exempt non-stormwater discharges causing exceedances states, "[s]uch demonstration must be based on source specific water quality monitoring data from the authorized or conditionally exempt essential non-storm water discharge *and* other relevant information regarding the specific non-storm water discharge." The conjunction should be changed to "*or*" rather than "*and*." It is also unreasonable to require monitoring from every conditionally-exempt discharge. Further, given that most

exceedances of receiving water limitations are discovered after at least a day, it is not possible to obtain a simultaneous sample from a conditionally exempt essential non-storm discharge. Therefore, a requirement for a permittee to provide water quality monitoring data from a past discharge to prove it is not in violation is an impossible task and sets permittees up to fail.

6. Table 8, footnote 20 on Pg. 33

The requirement states, "Permittees shall require that the following information is maintained by the lake owner / operator..." It is not clear which permittee is responsible: the one whose MS4 discharge first enters or the one from where the discharge originates. Again, the permit should not have requirements in footnotes. Footnotes are meant for clarifications, citations and references applicable to the main text. Please clarify the requirement and remove it from the footnotes.

7. Section V.A.3 Receiving Water Limitations on Pg. 37 and VI.D. Storm Water Management Program (SWMP) Minimum Control Measures on Pg. 56

This appears to be a new requirement for a Storm Water Management Program. It is not clear if this is a substitution of the prior/current municipal permit's Stormwater Quality Management Program (SQMP). Does this SWMP replace SQMP? It is not clear why the Regional Board would eliminate an established program. Further, it is not clear whether this program is supposed to address all potential discharges to the MS4. The name seems to imply that it only applies to wet weather, thereby leaving permittees liable for non-storm discharges if a program is not in place to address non-storm discharges to the MS4. If this program requirement is intended to address more than stormwater, the City suggests that the name be changed to something more suitable and inclusive, such as Water Protection Program, Runoff Management Program or another more appropriate title.

8. Section VI A.2.a Provisions/Legal Authority on Pg. 38 and Pg. 39

The provisions require a permittee to: "Control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction activity and control the quality of storm water discharged from industrial and construction sites." This requirement is stated in the context of those sites that do and do not have state coverage under an NPDES permit. Those sites which are subject to a State permit should be regulated by the State. It is not the local permittee's responsibility to enforce all conditions of the industrial or construction site's statewide NPDES permit. Such enforcement is the responsibility of the State Water Board as the issuer of said permit.

9. Section VI.A.2.a.viii Legal Authority on Pg. 39

It is not clear how the Regional Board expects permittees to "Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation." Please provide examples of interagency agreements that would be applicable and effective to meet this requirement. Additionally, there is minimal

infrastructure in much of Malibu and the City does not own or operate an extensive or modern system of curb and gutter, drainage pipes or flood control channels. In Malibu, there are approximately 232 total catch basins/culverts that the City maintains (cleans and marks with a “No Dumping” message) and there are no open channels in Malibu’s MS4 and only a few small channels inside the City limits that are fully Los Angeles County Flood Control District’s (LACFCD) MS4. The City has approximately 21,755 feet of closed storm drain. Despite having other agencies own portions of the MS4 in Malibu, the system is unlike most areas of Los Angeles County (where there is an elaborate system of co-mingled drains winding through multiple jurisdictions throughout the countywide MS4). Therefore, the City fails to grasp the importance of interagency agreements for all permittees and finds it to be an excessive requirement. Sometimes, the “one size fits all” approach does not fit for all requirements. Instead, this provision should be changed to suggest that permittees consider adopting interagency agreements where necessary to establish responsibilities when an MS4 is substantially shared by multiple agencies.

10. Legal Authority Section VI.A.2.a.vii and VI.A.2.a.viii on Pg. 39

In section VI.A.2.a.vii, the draft permit states that [permittees shall] "control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees." The intent and scope of this provision is not clear. For example, it is not clear which permittees or which portions of the MS4 this is intended to cover. Please clarify what a “Shared MS4” means, as that is not a defined term. Additionally, if you can please provide some clarification as to what this provision is attempting to accomplish, permittees will be better able understand if they have the legal authority to comply with this mandate. Without additional information, it is difficult to determine the scope of this proposed requirement.

11. Legal Authority Section VI.A.2.a.ix Legal Authority on Pg. 39

The following requirement is vague and unclear:

“Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with applicable municipal ordinances, permits, contracts and orders, and with the provisions of this Order, including the prohibition of non-storm water discharges into the MS4 and receiving waters. This means the permittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from entities discharging into its MS4...”

Typically, the City obtains authority to enter private property by either a) receiving consent of the owner to enter the property to carry out inspections etc, or b) obtaining an inspection warrant from the court by providing sufficient evidence why an inspection warrant is required. Please clarify the scope of the legal authority for inspections that is being proposed in the permit.

12. Section VI.A.5.b Public Review on Pg. 41

This provision states, “All documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.” It is not clear whether the Regional Board or the permittee will be required to hold the 30-day public review of documents. Please clarify this language.

13. Section VI.A.6 Regional Water Board Review on Pg. 41

It is imperative that this Permit add a condition providing that when a permittee submits a plan or program to the Regional Board for review to meet a condition of this Permit, the Regional Board shall notify an agency of approval, denial and reasons for denial, or provide a request for corrections for within 60 days, or else the plans shall be deemed automatically approved. This condition is not unusual and, in fact, is a standard process with the California State Department of Fish and Game for applicants submitting an application for a streambed alteration agreement. Failure of the Regional Board staff to provide responses and comments or approval after a permittee submits a mandatory plan or report leaves the permittee in a state of uncertainty as to how it should proceed under its permit obligations.

14. Section VI.A.14.f. Enforcement on Pg. 44

The Permit states:

“Pursuant to California Water Code section 13385.1(d), for the purposes of section 13385.1 and subdivisions (h), (i), and (j) of section 13385, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for these purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.”

This definition on its face appears to be problematic. Does use of this definition preclude a WQBEL (especially a narrative or non-numeric WQBEL) or BMP-based compliance? Please clarify how this term is being used and why “for these purposes” it does not include a receiving water limitation, a compliance schedule or a best management practice.

15. Section VI.C.2.a.i. Watershed Management Programs Implementation Requirements Table 9 on Pg. 46

This table provides unreasonably short timeframes. Six months is not enough time to prepare preliminary analyses and obtain necessary funding allocations to make a decision whether or not to participate in a Watershed Management Program. Additionally, due to the complexity of the watersheds, the number of responsible agencies and numerous TMDLs, one year is a woefully short timeframe to develop an effective strategy, including any studies necessary to determine what actions to take to comply with these various regulations.

Permittees who are collaborating in good faith with other agencies may be set up for failure with these short timeframes. The timeframes must be extended and there must be an opportunity for an administrative extension for good cause.

Additionally, the Table would probably be better placed at the end of this section, since it applies to all of the subsections and each condition already states each deadline.

16. Section VI.D.2.a.iii Progressive Enforcement and Interagency Coordination on Pg. 57

This condition does not state a retention policy for records, just that a permittee shall retain records. How long does the Regional Board intend for a permittee to retain such records to comply with this requirement? Please clarify if there is a certain timeframe or if it just needs to be consistent with permittees' existing policies. Permittees have formal records retention policies and must be put on notice to modify those policies if necessary to comply with the Permit.

17. Section VI.D.5.c.ii.b. Educate Industrial / Commercial Sources on Pg. 63

"Distribution of storm water pollution prevention educational materials to operators of ... distributors of pesticides, herbicides and fertilizers, if present." Please clarify what is meant by "if present."

18. Section VI.D.5.d.ii Inspect Critical Commercial Sources on Pg. 63

The condition requires that: "Each Permittee shall inspect all commercial facilities identified in Part VI.D.5.b." Please specify "critical" for commercial sources inspections, just so there is no question of the intent of this requirement and so that it is not misinterpreted to be *all* commercial facilities

Additionally, the Permit requires: "Each Permittee shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA)." It is not clear if the term SEA is the same as Environmentally Sensitive Area (ESA) from the previous/current permit or if it is a new designation. It is mentioned several times throughout the Permit. Please clarify.

19. Section VI.D.5.e.i.2 Exclusion of Facilities Previously Inspected by the Regional Water Board on Pg. 64

The City supports this condition; however, if the State is collecting fees annually for the purposes of permitting these Industrial Facilities subject to the General permit, then the State should, at a minimum, inspect such facilities at least two times during the permit term. Alternatively, if the State is collecting inspection fees, then the municipal permittees should be allowed to recoup inspection costs from the State. Furthermore, it is imperative that the State promptly update the database to track its inspection of these facilities. This was not done during the term of the last permit for the one (now terminated) facility subject to the general permit within the City of Malibu. The City discovered that the State had indeed inspected, but only after the City conducted an inspection of the facility.

20. Section VI.D.5.e.ii.3 Scope of Mandatory Industrial Facility Inspections on Pg. 65 and VI.D.5.g Significant Ecological Areas (SEAs) on Pg. 66

VI.D.5.e.ii.3 states: “The Permittees shall require implementation of additional BMPs where storm water from the MS4 discharges to an environmentally sensitive area, a water body subject to TMDL Provisions in Part VI.E, or a CWA § 303(d) listed impaired water body. Likewise, if the specified BMPs are not adequately protective of water quality standards, a Permittee may require additional site-specific controls.” This seems to be repetitive of VI.D.5.g., which deals directly with SEAs and states, “For critical sources that discharge to MS4s that discharge to SEAs, each Permittee shall require operators to implement additional pollutant-specific controls to reduce pollutants in storm water runoff that are causing or contributing to exceedances of water quality standards.” The City suggests deleting the repetitive language from VI. D.5.e.ii.3 and, instead, editing VI.D.5.g to be more inclusive.

21. Section VI.D.6 Planning and Land Development on Pg. 66

The City supports this program’s name change to Planning and Land Development Program as it more clearly defines the program.

22. Section VI.D.6.a.i.6 Purpose on Pg. 67

Drainage of a structural BMP within 96 hours at the end of rainfall may not be practical. The drainage of the BMP will most likely be used for landscape irrigation. Within 96 hours at the end of a rain event, landscape irrigation may not be needed. Other measures, such as recirculation, should be considered to minimize the potential for the breeding of vectors.

23. Section VI.D.6.c.i.2 New Development and Redevelopment Project Performance Criteria on Pg. 70

The City would like to again emphasize that the onsite retention of the SWQDv, as stated in Section VI.D.6.c.i.2, will be physically impossible for many projects in Malibu due to high groundwater, geotechnical hazards and geologic instability, or where there are adjacent onsite wastewater treatment systems (OWTS). With this requirement, offsite infiltration or bioretention most likely will be infeasible since onsite retention is almost impossible in many areas of the City. In other words, there is no other place to put the water in certain areas because the same problematic groundwater and geologic conditions are widespread throughout the City. Groundwater replenishment is definitely not an option in most areas, as the City does not have a viable aquifer due to geological conditions. Retrofitting an existing developed site has limited options, as Malibu already has a high percentage of open and undeveloped space and existing developed space that is primarily low density and rural residential, and the City has few existing commercial properties. The only feasible option left for the very limited number projects that are in the City, which are already heavily regulated by the City’s approved Local Coastal Plan, is the onsite biofiltration systems. However, requiring 1.5 times the SWQDv is excessive, arbitrarily assigned and without any substantiation that treating 1.5 the volume will significantly improve the water quality any more than a design using the SWQDv.

24. Section VI.D.6.c.ii.(2)(f) Alternative compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment on Pg. 71

This section should include any dewatering wells that are used to reduce the geotechnical hazards. The City has several dewatering wells located throughout the City that are used to stabilize the hillsides and slopes and to mitigate landslide threats. These dewatering wells are used to avoid rising groundwater that could cause landslides and other geotechnical hazards. Allowing the replenishment of groundwater in these locations would increase the amount of dewatering beyond what the existing dewatering pumps can produce. This will cause instability in the existing geotechnical hazard area. Lastly, the groundwater would not be replenished in this area since the groundwater pumps would collect the water.

25. Section VI.D.6.c.ii.(2) Alternative compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment on Pg. 71

The City suggests adding a section indicating that it would be technically infeasible to replenish groundwater supply located adjacent to OWTS.

26. Section VI.D.6.c.iii Alternative Compliance Measures on Pg. 71

The Alternative Compliance Measures detailed (starting on page 71) leave projects in the City of Malibu with few alternatives. As previously explained, offsite infiltration or bioretention will rarely be an option. Additionally, groundwater recharge cannot be performed within the City due to high groundwater, geotechnical hazards and geologic instability or where there are adjacent OWTS.

27. Section VI.D.6.c.iii.4.b Offsite Project - Retrofit Existing Development on Pg. 73

The City requests that the Regional Board add a footnote to explain where to find definitions and acronyms for HUCs and also include the information in Attachment A – Definitions since this is a new and unfamiliar term in this Permit.

28. Section VI.D.6.c.v.1.b Exemptions to Hydromodification Controls on Pg. 76

This condition states, “Permittees may exempt the following New Development and Redevelopment projects from implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to present and future beneficial uses of Natural Drainage Systems are unlikely.” Permittees have no means to determine what future beneficial uses may be, only what current beneficial use determinations have been established. Please delete “and future.”

29. Section VI.D.6.c.v.1.c Interim Hydromodification Control Criteria on Pg. 77

Delete “until the State or Regional Water Board adopts a final Hydromodification Policy or criteria” as this language is redundant and is previously stated in VI.D.6.c.v.1.a.iv.

30. Section VI.D.6.c.vii Annual Report on Pg. 77

The Permit requires: “Each Permittee shall provide in their annual report to the Regional Water Board a list of mitigation project descriptions and pollutant and flow reduction analyses (compiled from design specifications submitted by project applicants and approved by the Permittee(s)) comparing the expected aggregate results of alternative compliance projects to the results that would otherwise have been achieved by retaining on site the SWQDv.” It is not clear what the “mitigation project descriptions” includes. Please clarify if this means all planning project applications, only those for which construction is completed or something else. Further, is this only meant for offsite projects or groundwater replenishment projects?

31. Section VI.D.6d.iv.1.c.i. Tracking, Inspection, and Enforcement of Post-Construction BMPs on Pg. 82

Please clarify if the “Post-construction BMP Maintenance Inspection checklist” is an item that will be provided by the Regional Board or if is an item that the permittees are required to develop.

32. Section VI.D.7.d.i.3 Requirements for Construction Sites Less than One Acre on Pg. 84

The Permit states: “Inspect construction sites on as needed based on the evaluation.” This needs rewording for clarity. The City suggests, “as needed basis to evaluate the factors...”

33. Section VI.D.7 e-j Construction Site Requirements from Pg. 84-91

Despite *C. Applicability* stating, “[t]he provisions contained in Part VI.D.7.d below apply exclusively to construction sites less than 1 acre. Provisions contained in Part VI.D.7.e – j, apply exclusively to construction sites 1 acre or greater,” it is not clear in each individual condition, e through j, that this threshold applies. Please add language to these conditions that is more explicit in clarifying that it only applies to sites greater than one acre.

34. Section VI.D.7.g.ii.5 Construction Site Inventory / Electronic Tracking System on Pg. 85

The Permit requires that: “[e]ach Permittee shall complete an inventory and continuously update as new sites are permitted and sites are completed,” and it specifies that the current construction phase shall be included in the tracking database. It is unrealistic to require permittees to continuously update and be completely current, given the uncertain nature of construction schedules, delays in construction due to financing and other problems, etc. At best, a permittee may only be able to say a project is active or closed. Please either delete VI.D.7.g.ii.5 or revise it to say “where feasible.”

35. Section VI.D.7.h.ii.5 Construction Plan Review and Approval Procedures on Pg. 86

Requiring a Qualified SWPPP Developer (QSD) to prepare an ESCP is excessive, especially if the project is less than one acre. The City suggests removing the requirement of a QSD to develop an ESCP.

36. Section VI.D.7.j.ii.2 Construction Site Inspection on Pg. 90

The Permit requires that permittees “inspect all phases of construction.” Please clarify that this condition applies only to sites greater than or equal to one acre, perhaps by renaming the section to Construction Site Inspection for Sites Equal to or Greater than One Acre or a similar title.

37. Section VI.D.8.c Public Facility Inventory on Pg. 93

The Permit requires that “Each Permittee shall maintain an updated inventory of all Permittee-owned or operated (i.e., public) facilities within its jurisdiction that are potential sources of storm water pollution.” There are many facilities owned by other agencies within the jurisdictional limits of another public agency (e.g., federal, state, county, school district, etc.), over which the permittee has no control over activities at the other agency’s facility. Please include language that requires those agencies that are also permittees under this permit to provide this information to the City or jurisdictional lead where the facility is located. Additionally, please include language that would exempt facilities from the inventory requirement where the permittee city does not have authority over the agency and its facility and cannot require submittal of documentation.

38. Section VI.D.8.d.iv.1 Inventory of Existing Development for Retrofitting Opportunities on Pg. 95

The Permit states, “The Permittee’s storm water management program: Highly feasible projects expected to benefit water quality should be given a high priority to implement source control and treatment control BMPs in a Permittee’s SQMP.” However, SQMP is not defined and seems to not be used anywhere else in the draft permit. The City assumes that the Regional Board intended to write SWMP. Please correct and clarify.

39. Section VI.D.8.g.ii Landscape, Park, and Recreational Facilities Management on Pg. 95

This section includes a description of “Integrated Pest Management.” This definition is more appropriately placed in Attachment A – Definitions and as a footnote. The City suggests moving this information to where it is more appropriate.

40. Section VI.D.8.h.vi.4 Catch Basin Labels and Open Channel Signage on Pg. 102

This section details signage requirements for drainage facilities. This requirement must be revised to explain that it only applies to facilities owned or operated *by the Permittee*.

41. Section VI.D.8.h.vii Storm Drain Maintenance on Pg. 102

This section, placing requirements for installing trash excluders within two years on catch basins not subject to a Trash TMDL, is excessive and may constitute an unfunded mandate. Therefore, the City requests that this requirement be deleted. As written, it seems to offer alternate options; however, this level of effort is not warranted if a trash problem has not been shown. Please add language that specifies this applies only to those areas deemed Priority A and owned or operated by the permittee.

42. Section VI.D.8.h.x.3 Permittee Owned Treatment Control BMPs on Pg. 102

“Residual water” needs to be added to definitions, as stated in the footnote.

43. Section VI.D.9.c.iv Documentation on Pg. 108

This section states, “Formal records must be maintained,” but does not specify the records retention schedule. Does the Regional Board determine this timeframe or does each agency follow its own policy? Please clarify.

44. Section VI.D.9.d.iii Public Reporting of Non-Storm Water Discharges and Spills on Pg. 109

The Permit states, “Each Permittee shall ensure that signage adjacent to open channels, as required in Part F.8.h.vi, include information regarding dumping prohibitions and public reporting of illicit discharges.” This section needs to specify “Permittee-owned” open channels. It would also, however, be acceptable to instead “suggest collaborating with owner to ensure ...”

45. Section VI.D.9.f.v Illicit Connection and Illicit Discharge Education and Training on Pg. 110

Clarify that new “targeted” permittee staff members, as identified in Section VI.D.9.f.i, will receive IC/ID training. While Malibu trains as many staff members as possible (regardless of their position), the Permit, as currently written, still would mandate that all new employees need this training.

46. Section VI.E.2.c.iii Receiving Water Limitations Addressed by a TMDL on Pg. 113

This section states, “it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO.” Although the Regional Board does not intend to take enforcement action if the permittee is in compliance with the TSO, submittal of a TSO and implementing a compliance plan does not shield the City from citizen suits and may actually increase the risk of legal liability from citizen suits while the City is implementing its compliance schedule. This is a significant vulnerability that needs to be resolved. Ultimately, this is the same issue raised with the Receiving Water Limitations language in the first comment in this letter.

47. Section VI.E.3.c.iv.1 USEPA Established TMDLs and all VI.E.3 on Pg. 115

Conditions for compliance with Section VI.E.2.e.i.1-3 should apply to show compliance with EPA-Established TMDLs.

48. Section VI.E.5.b.i.1.c Full Capture Systems Compliance on Pg. 118

The language stating "... progressive installation of *full capture systems* throughout their jurisdictional areas until all areas draining to Lake Elizabeth, Malibu Creek, Ballona Creek, Machado Lake, the Los Angeles River system, Legg Lake, Peck Road Park Lake, and/or Echo Park Lake are addressed" needs to specify "all areas draining through a permittee owned point source."

49. Section VI.E.5.b.i.2.b on Pg. 119, Footnote 43

Please clarify that it is a 30-day collection period since the footnote comes before the first mention of it. Suggest adding "30-day period as discussed further" to the condition.

The following are comments on the Monitoring and Reporting Program (Attachment E):

50. Section VIII.A.2 Criteria for selecting outfalls on Pg. E-17

The City requests that the Regional Board add an item 'f' providing that: "The selected outfall(s) for monitoring should be owned by the permittee where feasible."

51. Section VIII.B Identification of Outfalls with Significant with Non-Storm Water Discharge on Pg. E-20

Please delete the extra "with" in the title (after "Significant").

52. Section VIII on Pg. E-20

The numbering is off in this section. Inventory of MS4 Outfalls with Non-Storm Water Discharges should be "C" not "D." Please revise.

53. Section IX.A.2 Objectives of the Non-Storm Water Outfall Screening and Monitoring Program on page E-19

The City reiterates the LA Permit Group's Comment #32 in the Technical Comments for this Attachment that requests, "Include "natural flows" or "natural sources" as a potential source of non-storm water flow" in this section.

54. Section XVII Watershed Summary Information on Pg. E-40

The requested information shall be provided for each watershed within the permittees jurisdiction. Please clarify "watershed." Is this meant to be Watershed Management Area or subwatershed HUC-12?

55. Section XVIII Annual Assessment Reporting on Pg. E-41

Does this requirement apply to Watershed Management Area or subwatershed HUC-12? Please clarify.

56. Section Monitoring & Reporting Santa Monica Bay TMDL for DDTs and PCBs on Pg. E-50

This requirement is not justified. With respect to PCBs, the listing for Santa Monica Bay (Decision ID 5308 in the fact sheet supporting the State Water Board's 2010 Integrated Report) states that the line of evidence (LOE) used to support the listing included data from samples taken at only two stations (at Santa Monica Pier and Venice Pier) in July and November of 1999. That may not be indicative of all conditions along the entire coastline and impairments cannot be assumed without scientific support. The fact sheets for all of the individual beaches state that there are zero samples with zero exceedances, the data and information type is unspecified and the data used to support the listing is unspecified. These sites may have been added as placeholders in 2002 based only on the listing of the Santa Monica Bay offshore and nearshore listing and without specific data to support the listing at each individual beach. All of those listings which formed the basis for the TMDL should have been considered only after applying the current listing policy. Furthermore, a load based TMDL is ineffective for these beaches when the manufacture of PCBs is prohibited and federal EPA is considering further regulatory actions to control the release of PCBs.

Further, it is widely believed that the initial DDT impairments are due to historic violations by the Montrose Chemical Corporation (well outside limits of the northern Santa Monica Bay), and that area of the ocean is now being addressed by EPA as a CERCLA (Superfund) site. Additionally, other contaminants, like PCBs, are believed to be elevated near wastewater treatment plant outfalls. "Contaminant inputs from wastewater discharge, a major source of contamination to Santa Monica Bay (SMB), have declined drastically during the last three decades as a result of improved treatment processes and better source control."¹ Also, "the widespread distributions of DDTs and PCBs in SMB and highly confined distribution of LABs [linear alkylbenzenes] around the HTP [Hyperion Treatment Plant] outfall system were indicative of a dispersal mechanism remobilizing historically deposited contaminants to areas relatively remote from the point of discharge."² In other words, the sources or discharges of these contaminants seem to have dissipated and enforcing this TMDL upon agencies that had no evidence of causing or contributing to the water quality impairment is unjustified. Further, agencies not associated with the original discharge should not be held accountable for mitigation. The City of Malibu has no wastewater treatment plant outfall to discharge these pollutants and is certainly remote from point of discharge.

It is troubling that this listing and TMDL exist based on a past Integrated Report placeholder with one LOE, but none of the data or information is available in the State's database. In association with the Bight 2008 study program, the City of Malibu commissioned a series of sample events in the coastal receiving waters in the North Santa Monica Bay. Samples were

¹ Bay, S.M., Zeng E.Y., Lorenson T.D., Tran K., and Alexander C., SCCWRP, *Temporal and spatial distributions of contaminants in sediments of Santa Monica Bay, California*, Abstract, 2003. Available at <http://www.ncbi.nlm.nih.gov/pubmed/12648959>.

² Bay, S.M., Zeng E.Y., Lorenson T.D., Tran K., and Alexander C., SCCWRP, *Temporal and spatial distributions of contaminants in sediments of Santa Monica Bay, California*, Abstract, 2003. Available at <http://www.ncbi.nlm.nih.gov/pubmed/12648959>.

taken in the wavewash for three pre-storm and three post-storm events at two different sites: (1) a reference type watershed with greater than 90% undeveloped land area and where there were no storm drain discharges; and (2) at a stretch of coastal receiving waters adjacent to storm drain discharge pipes on Broad Beach.

Review of the samples showed that none of the samples analyzed had detected any Chlorinated and Organophosphorous Pesticides, using EPA standard method 625, which includes analysis of DDT and PCB. The City, therefore, requests that additional monitoring and reporting requirements for DDT and PCB be removed.

57. Documentation and Reporting – General

The minimum control measures overall will require an inordinate amount of tracking and documentation, much of which may not lead to a demonstration that water quality is being protected. While an electronic system is ideal, it is not always available to a permittee, is a costly endeavor and should be an optional method of maintaining records, not mandatory. The City of Malibu is in the process of developing such an electronic permitting system, but there is no guarantee that it will be completed in time to meet this condition or that the funding will be available to include *all* of the specifics of this provision. Therefore, the City requests that: (1) the Regional Board take a closer look at this section and specify what data is of real value to determining compliance and/or water quality protection; and (2) allow for reasonable timeframes to comply with these requirements (if an advanced tracking and inventory system remains a requirement rather than a recommendation). Additionally, there did not seem to be an annual report form for all of the general provisions and minimum control measures included. Permittees should be given an opportunity to review and comment on whatever form will be used for the annual report and, ideally, it should have been provided with the draft permit for concurrent review. The previous/current permit requires repetitive reporting and essentially several sections of “bean-counting” that have questionable benefits to protecting water quality or determining a permittee’s compliance. Please clarify the process that will be used to standardize annual reporting.

Lastly, the City reserves its right to provide additional comments, should more time be provided.

Malibu understands the inherent challenges in drafting a permit for such a diverse geographic region. Again, the City would like to emphasize the need for flexibility and reasonableness when a one size fits all approach is not feasible for various parts of the County. In the end, the Permit must identify a method of balancing the need to protect receiving water quality in a manner that accounts for the real, practical challenges that the permittees face. The City continues to support the interactive approach to developing this permit and iterative options for compliance, thanks the Regional Board for the opportunity to comment, and urges the Regional Board to provide another complete second draft Tentative Order with an additional review period to allow permittees to have at least a total of 180 days to discuss and review the full document. We believe it important to review the entire draft permit and the new revisions that may arise from public comment to better understand the relationship among the various provisions.

If you have any questions regarding this letter, you may contact Jennifer Brown, Senior Environmental Programs Coordinator, at (310) 456-2489 ext. 275, or jbrown@malibucity.org.

Sincerely,



Jim Thorsen
City Manager

cc: Mayor Rosenthal and Honorable Members of the Malibu City Council
Christi Hogin, City Attorney
Vic Peterson, Environmental Sustainability Director
Bob Brager, Public Works Director
Jennifer Brown, Senior Environmental Programs Coordinator
Ivar Ridgeway, Stormwater Permitting Chief, Regional Water Quality Control Board

July 20, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

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**SUBJECT: Comments to the Los Angeles Regional Water Quality Control Board's
Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001**

Dear Mr. Ridgeway:

The City of Monrovia ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001) ("Permit"). The LA Permit Group has also submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Monrovia, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, numeric effluent limitations for final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit for final wasteload allocations and as a definitive method of compliance for all Permit requirements, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability. Furthermore, the process that the Permit calls for permittees to monitor exempted discharges to determine if they are a significant pollutant source is overly onerous, costly, and puts permittees in a position of undue liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has **removed** the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.,* Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits. The same applies to the Permit's onerous requirements to inspect and otherwise regulate other permittees and potential permittees.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”,

such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitee’s discharge. Rather, the Permit requires copermitees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. See Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. See Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. See Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees’ data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet’s open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees’ actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District’s Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit’s requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well

after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,

Laurie K. Lile
City Manager, City of Monrovia

Enc. LA Permit Group Comment Letter

cc: Heather Maloney, Senior Management Analyst
Ron Bow, Director of Public Works
Craig A. Steele, esq., City Attorney
Sam Unger, LARWQCB
Deborah Smith, LARWQCB



Office of the City Manager

July 20, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

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Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001**

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The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge "causes or contributes" to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit's current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, numeric effluent limitations for final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit for final wasteload allocations and as a definitive method of compliance for all Permit requirements, as outlined in EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." ("EPA Memorandum"). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the "disaggregation" of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability. Furthermore, the process that the Permit calls for permittees to monitor exempted discharges to determine if they are a significant pollutant source is overly onerous, costly, and puts permittees in a position of undue liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” See also *City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. See *Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has removed the constitutional police power of the City to regulate” in the area); see Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. See *City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (See, e.g., Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits. The same applies to the Permit's onerous requirements to inspect and otherwise regulate other permittees and potential permittees.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

"(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required."

The Permit goes far beyond a requirement that a permittee "monitor" the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request "other information",

such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitee’s discharge. Rather, the Permit requires copermitees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. See Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. See Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. See Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees’ data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet’s open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees’ actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District’s Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit’s requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well

after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Laurie K. Lile
City Manager, City of Monrovia

Enc. LA Permit Group Comment Letter

cc: Heather Maloney, Senior Management Analyst
Ron Bow, Director of Public Works
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July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B). We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (NRDC v. County of LA) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 M54 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm.² In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.)³ do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed. The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MSA Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MSA dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAS) as outlined in the Draft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MSA discharges, and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Anges and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for Caltrans also states "Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective." The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, it is critical to use non-numeric water quality based

⁵ "[I]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit." (Order WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006. U.S. EPA, Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective. Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- Translate WLAs into WQBELs, expressed as BMPs.
- State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.
- Provide for four compliance options for both interim and final WLAs:
 - Implement Actions/BMPs consistent with Watershed Management Program
 - Compliance at the outfall (end of pipe)
 - Compliance in the receiving water (river, creek, ocean)
 - No direct discharges
- Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.

Monitoring

The proposed monitoring program requirements have significantly increased compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are a number of issues within the MRP that need to be more fully vetted and discussed. These issues include:

- Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event. Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows. We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, i.e. a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis. Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- Toxicity monitoring should be limited to the receiving water only and not at the outfalls. It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a letter of intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MSA

The Draft Order shifts much of the State responsibilities regarding the State's General Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MSA costs.
- Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupported. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on-site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State. A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an illicit connection/illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such, the TMDL monitoring program should be the basis for the "non-stormwater outfall based monitoring program" and both should be identified in an Integrated Watershed Monitoring Program.

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOWs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e.g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.
- The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.
- The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.

- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.
- The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.
- The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, **it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.**

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectfully request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

¹² S. Unger's 7/13/12 letter to H. Maloney and the LA Permit Group.

Exhibit A

LA Permit Group

City of Pico Rivera	City of Gardena	City of Agoura Hills
City of Pomona	City of Glendale	City of Alhambra
City of Redondo Beach	City of Glendora	City of Arcadia
City of Rolling Hills	City of Hawthorne	City of Artesia
City of Rolling Hills Estates	City of Hermosa Beach	City of Azusa
City of Rosemead	City of Hidden Hills	City of Baldwin Park
City of San Dimas	City of Huntington Park	City of Bell
City of San Gabriel	City of Industry	City of Bell Gardens
City of San Marino	City of Inglewood	City of Bellflower
City of Santa Clarita	City of La Verne	City of Beverly Hills
City of Santa Fe Springs	City of Lakewood	City of Bradbury
City of Santa Monica	City of Lawndale	City of Burbank
City of Sierra Madre	City of Los Angeles	City of Calabasas
City of South El Monte	City of Lynwood	City of Carson
City of South Gate	City of Malibu	City of Claremont
City of Torrance	City of Manhattan Beach	City of Commerce
City of Vernon	City of Monrovia	City of Covina
City of West Covina	City of Montebello	City of Culver City
City of West Hollywood	City of Monterey Park	City of Diamond Bar
City of Westlake Village	City of Paramount	City of Duarte
	City of Pasadena	City of El Monte

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Comment	Doc. Reference	No.	Page	Section	Comments
1	General	1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements
2		17		Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.
3	pages 111 - 123 and Attachments K - R	3	pages 111 - 123 and Attachments K - R	TMDL	<p>As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrates that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>
4	pages 111 - 123 and Attachments K - R	4	pages 111 - 123 and Attachments K - R	TMDL	<p>Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the jurisdictional agencies. This is also in conflict with the intent of the Regional Board as expressed in finding 21 of Resolution 2002-022 "that it is not require treatment of natural sources of bacteria from undeveloped areas".</p>
5	pages 111 - 123 and Attachments K - R	5	pages 111 - 123 and Attachments K - R	TMDL	<p>The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored daily. The CSMP established that highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.</p>
					<p>The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.</p>

Jul-12

Same comment

The Tentative Order, states "... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?

This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included

This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "if additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management of areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLA be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.

12	pages 111 - 123 K - R and Attachments	TMDL	The WLA's in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.	Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.	Same comment
13	pages 111 - 123 K - R and Attachments	TMDL	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		Same comment
14	pages 111 - 123 K - R and Attachments	TMDL	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D	Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 K - R and Attachments	TMDL	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		Same comment
16	pages 111 - 123 K - R and Attachments	TMDL	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 K - R and Attachments	TMDL	Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.		Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 K - R and Attachments	TMDL	N/A		Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 K - R and Attachments	TMDL	N/A	Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards . [Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.] More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order: <i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</i> The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the Storm Water Panel Recommendations to the California State Water Resources Control Board in re: <i>The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities</i>
21	pages 111 - 123 K - R and Attachments	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv		For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (imprevious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.	
28	113	E.2.d.i.4.b.		is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e		Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a		This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5		Please clarify that cities are not responsible for retrofitting.	Same comment
32	116-123	E.5.a - c		Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2		Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)		MFAc and TMRF should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)		For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c		Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	Dominguez Channel and E.2.d.1.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Waters WMA Harbor			For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.1.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.1.4 which will provide the opportunity for the permittee to develop BMP-base compliance efforts to meet interim goals.	Waters WMA Harbor Greater Channel and Dominguez			For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.1.4 which will provide the opportunity for the permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Waters WMA Harbor Greater Channel and Dominguez			For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C				For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4				Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA				It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Comments	Doc. Reference	Comment
	Page	No.
Jul-12	37-38	1
	Section	
Apr-12	All	
<p>There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with the quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.</p>	<p>Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue</p>	

Comment	Doc. Reference	No.	Page	Section	
1	13-26	Findings	several related	<p>Apr-12</p>	<p>Jul-12</p>
<p>Please add findings regarding the iterative process.</p>	<p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean an outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(iii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal stormwater regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the stormwater regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>				

Comments

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	<p>It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.</p>
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Comment	Doc. Reference	Section	Page	No.
	General	General	1	2
<p>It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.</p> <p>Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.</p>	General	General	2	3
<p>RB staff proposed language requires the permittees to "prohibit non-stormwater discharges through the MS4 to receiving waters" except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as "a discharge to the MS4 that is not composed entirely of stormwater". In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p>"Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."</p> <p>This is further illuminated by the section on Effective Prohibition on Non-Stormwater Discharges[2]:</p> <p>"Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an effective prohibition would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</p> <p>The rulemaking goes on to say that the permit application:</p> <p>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mois.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p>"No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water."</p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p> <p>The conditional exemption of street/sidewalk water is inconsistent with the requirement in the Industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.</p> <p>Enforcing NPDES permits issued for the various NSWDs referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWD category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.</p>	A.	26	3	4
<p>The conditional exemption of street/sidewalk water is inconsistent with the requirement in the Industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.</p> <p>Enforcing NPDES permits issued for the various NSWDs referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWD category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.</p>	Discharge	33-36, Table 8	5	4

Comments

Jul-12

6	39	A.2.a.i	Staff proposal states: "Control the contribution of pollutants to MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."	It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.
7	39	A.2.a.vii	Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."	The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).
8	39	A.2.a.xi	Staff proposal states: "Require that structural BMPs are properly operated and maintained."	MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.
9	39	A.2.a.xii	Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."	It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMPs in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.
10	40	A.2.b	Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."	To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.
11	40	A.3	The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).	
12	40	A.3.a	Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"	This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order"... Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?
13	40	A.3.c	Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."	Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.
14	58	D.4.a.i.(2)	Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."	Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.
15	60	D.4.d.i.(2).(b)	Staff proposal states: "... including personal care products and pharmaceuticals"	The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.
16	60	D.4.d.i.(3)	The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?	
17	63-66	D.5.d-f	These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.	

19	67	D.6.a.1.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a).	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a).	The requirement for development of a new interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit (iv)
30	77	D.6.c.v.(1).(c).	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes.
32	83	D.7.a.iii	MFP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-i	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-i	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D.1... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	D.8.d.v	95	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	D.8.e.ii	96	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects"
45	D.8.h.vii.(1)	102	Flood management projects need to be clearly defined. This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	D.8.h.ix	103	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance..." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	D.9	106-110	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	D.9.b.i	107	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	D.9.b.iii.(1)	107	For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development", and "Re-development" should be added. The definitions in the existing permit should be used: "Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety. "New Development" means land disturbing activities: structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision. "Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety. The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A,	Page 1	Definitions
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems.
54			"The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly. Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1)."
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

Comment	Doc. Reference	No.	Page	Section
		1	Multiple	Multiple
		2	Multiple	Multiple
<p>The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.</p>	Attachment E,	3	Page 3	II.A.1
<p>Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an unfunded mandate. Please provide legal justification for this transfer of jurisdiction.</p>	Attachment E,	4	Page 4	II.E.1
<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p>				
<p>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</p>				
<p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p>				
<p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p>				
<p><i>Recommended Corrective Action</i>: Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>	Attachment E,	5	Page 4	II.E.1.c
<p>Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ... aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an unfunded mandate. Please provide legal justification for this transfer of jurisdiction.</p>	Attachment E,	6	Page 4	II.E.2.a
<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p>				
<p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p>				
<p><i>Recommended Correction</i>: Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>				
<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(iii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p>	Attachment E,	7	Page 4	II.E.3.a
<p><i>Recommended Correction</i>: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>	Attachment E,	8	Page 4	II.E.3.b
<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p>				
<p><i>Recommended Correction</i>: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>	Attachment E,	9	Page 4	II.E.3.c
<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p>				
<p><i>Recommended Correction</i>: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>				

Comments

Jul-12

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction</i>: Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an unfunded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p> <p>Omit Items F, & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These items should be combined and state to follow USEPA Protocols or per approved TMDLs.</p> <p>There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."</p>
12	Attachment E, Pages 5-6	III.F & G	
13	Attachment E, Page 6	III.H.3	
14	Attachment E, Pages 7-8	IV.C.1	<p>More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.</p>
15	Attachment E, Page 8	IV.C.2	<p>Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."</p>
16	Attachment E, Page 8	IV.C.3	<p>Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.</p>

Revise to allow 9 months after approval of an IMP or CIMF by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.

18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <p>1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1.</p> <p>3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period.</p> <p>5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1).</p> <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMF plan(s).”</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMF or approved TMDL. The IMP and CIMF should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMF plan(s) shall include a map and/or database of the MS4 to include the following information.” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year...”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit item ii. and iii. Monitoring should be performed per approved IMP or CIMF or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls in the inventory within 5 years...”

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittes all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittes all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.1.1 & 2	It is not reasonable to force Permittes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittes all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals

LA PERMIT GROUP

*A collaborative effort to negotiate the
Los Angeles County MS4 NPDES Permit*

February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: *LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs*

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However; the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an Integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:

- a. evaluates the current conditions in impaired water bodies (identified by effective TMDLs),*
- b. facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and*
- c. identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4*
- d. promotes the IWMP and provides time schedule incentives.*

The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 2 of 6

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. **Pyrethroid Study**. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. **Hydromodification Study**. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts¹. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. **Low Impact Development Study**. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

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<http://www.sccwrp.org/ResearchAreas/Stormwater/Hydromodification/AssessmentAndManagementOfHydromodification.aspx>

LA Permit Group
 Comments on 1/23/12 LARWQCB Monitoring Program Presentation
 Page 3 of 6

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort.

Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23²) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide 18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:
 - a. Unclear how baseline non-stormwater flows are established.
 - b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).
 - c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

² Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 4 of 6

- d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.
- e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.
- f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.
- g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watershed and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

**LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 5 of 6**

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permittees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health³ or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

³ The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

**LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 6 of 6**

**LA Permit Group, proposal for
INTEGRATED WATERSHED MONITORING PLANS, cont.**

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLAs, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

**LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12**

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a “one size fits all” approach.
 - a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:
 - i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
 - ii. Runoff reduction BMPs;
 - iii. Treatment control BMPs where effectiveness information is available;
 - iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
 - v. Research and development for pollutant types where effective BMPs have not been identified.
 - b. These categories will be incorporated as part of the Stormwater Quality Management Plans.
 - c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.
2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:
 - a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
 - b. specific procedures for evaluating BMP effectiveness; and
 - c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

**LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 2 of 4**

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEP given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 3 of 4

“point sources”, which are “consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA.”

2. Define BMP-based WQBELs as “Implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAs, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAs.” This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
 - a. Not submitting the SQMP.
 - b. Not implementing all elements of the SQMP in accordance with the approved schedule.
 - c. Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states “The Permittees shall comply with the following effluent limitations and/or receiving water limitations...” This is followed by tables with the numeric WLAs.

We have three concerns with this language:

1. The language implies that the effluent limitations are strictly numeric.
2. The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
3. The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

**LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 4 of 4**

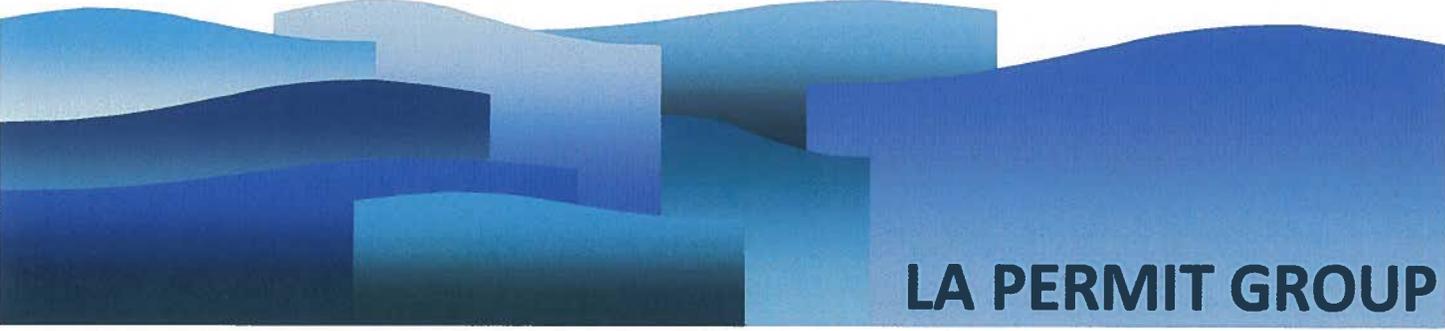
We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.



LA PERMIT GROUP

May 14, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant, additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provided stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the working proposals and the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose to develop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAs, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAs.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAs solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹), State Board orders (Order

¹ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)² have affirmed that WLAs can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES permits³. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has **discretion** in how the WLAs are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible⁴.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAs in this permit.** The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAs are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

² "[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit." (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

³U.S. EPA, *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

⁴ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*⁵ (NRDC v. County of LA) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

⁵ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

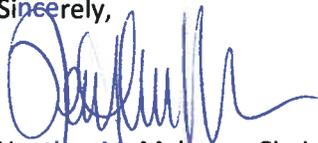
Beyond the legal/liability aspect of the receiving water limitations we would submit that in a practical sense the RWL works against the Watershed Management Program proposal. On the one hand the municipalities will develop watershed management programs that are based on the high priority water quality issues within the watershed. Consistent with the working proposal for the watershed management programs we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State there may be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms but according to the current RWL proposal, the municipalities must also address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectfully request that that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County
MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Comment	Doc. Reference	Page	Section	Comments	Rwr (optional)	Author Response
1		5	B.1.c.(2)	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p>		
1		5	B.1.c.(2)	<p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>		
1		5	B.1.c.(2)	<p>Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding Z1 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".</p>		

		<p>The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week. This is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week. The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.</p>	B.1.		2
		<p>Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".</p>	B.1.c.(3)	5	4
		<p>This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".</p>	B.1	1-6	5

		<p>While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.</p>	B.1.c(3)	5		6
		<p>Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.</p>	B.2.	6-7		7
		<p>The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]</p>	B.3.	7		8
		<p>In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.</p>	B.3.	7		8

10	3	C.2.c)	<p>The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.</p>
9	7	B.3	<p>Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.</p>

		<p>The WLAS in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	C.2.c)	3	11
		<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.</p>	C.2.c)	3	12
		<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.</p>	C.2.c)	3	13

		<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	C.3	3	
		<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	C.5.a)	4	15
		<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	C.5.	4-8	16
		<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Attach 1	1, 3, 15	17
		<p>Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."</p>	E.2.b.v.1.	2	18

	19	3	E.2.d.i.1.	<p>Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."</p>		
	20	4	E.2.d.i.4.b.	<p>Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.</p>		
	21	8	E.5.b.(c)	<p>Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.</p>		
	22	7	E.5.a.i-x	<p>Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?</p>		
	23	2	E.2.b.ii	<p>Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.</p>		
	24	2	E.2.b.iii	<p>For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.</p>		

26	3	E.2.c.iii	<p>For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopening purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.</p>	<p>This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.</p>	<p>For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.</p>	12-13	E.5.c.i(1)	<p>Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.</p>	31	4	E.2.e
30	7	E.5	<p>Please clarify that cities are not responsible for retrofitting.</p>	<p>Please clarify that cities are not responsible for retrofitting.</p>	7	E.5					
28	5	E.4.a									
29	12-13	E.5.c.i(1)									

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations -- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phrase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Comment	Doc. Reference	Section	Page	No.
Author Response				Rwr (optional)
Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		(4)	4	1
The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section III says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		various	2, 11, 13	2
Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs	Table and C.2.a - d		2, 3	3
Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions	C.3.a.iii		4	4
Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	(5)		9	5
Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the 18 month period while developing the Watershed Management Program and securing approval of those programs	C.2		2	6

		<p>While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more or less than</p>	(4)(c)	9	7
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Comment No.	Doc. Reference Page	Section	Comments	Rwr (optional)	Author Response
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		

LA PERMIT GROUP

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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or pursue a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position² that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State's General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupported. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

"MCMs for ID/IC"

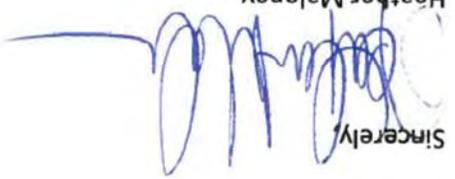
The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program" and both should be identified in an integrated Watershed stormwater outfall based monitoring program. Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges. Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

**LOS ANGELES PERMIT GROUP COMMENTS
 MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
 LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
1	2	C.1.c	<p>The Definition of: "Development"; "New Development" and "Re-development" should be added. The</p> <p>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</p> <p>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</p> <p>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
2	4	2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees. The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>	<p>2.a.vii</p>	<p>4</p>	<p>3</p>
<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>	<p>2.a.xi</p>	<p>4</p>	<p>4</p>
<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a leathargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>	<p>2.a.xii</p>	<p>5</p>	<p>5</p>
<p align="center">Fiscal Resources</p>			
<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>	<p>3</p>	<p>5</p>	<p>6</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

<p>Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order". Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>	3.a	5	7	<p>Public Information and Participation Program</p>
<p>Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>	6.a.iii	6	8	
<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>	6.d.i.2.b	7	9	
<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>	6.d.i.3	8	10	
<p align="center">Industrial/Commercial Facilities Program</p>				
<p>Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL..."</p> <p>As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICS/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.</p>	7.b.i.4	10	11	

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

12	7.b.ii.6	10	Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility"	Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."
13	7.d-f	11	These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.	
14	7.e.i	17	Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.	
15	7.e.i	17	Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.	
16	8.b.1	21	This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.	
17	8.b.i.1.g	21	Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.	
18	8.b.i.1.g	21	The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.	
19	8.b.i.1.g	21	Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.	

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

20	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)(k)-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i.(1) statement.
22	8.c.i.2	The SWQDV definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "... designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDV) defined as the runoff from all impervious surfaces that are generated by a..."
23	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	8.c.i.5	Please define the term "wet-weather season".
24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscapers within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26 Table	The table provided lacks clarity and the use of M _v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26 Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDV will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the "peak flow control" requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E _p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

41	40	8.d.iv.b	<p>This requirement should be limited to the sites already visited as part of the "critical sources" program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.</p>
Development Construction			
42	41	9.d	<p>Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.</p>
43	41	9.e.1.i	<p>Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.</p>
44	42-43	9.f.ii	<p>The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.</p>
45	43	9.f.iii.3.i	<p>An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.</p>
46	43	9.f.iii.4	<p>The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.</p>
47	43	9.f.iii.5	<p>The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permits without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permits are not made responsible parties for this activity.</p>
48	43	9.f.iii.8	<p>The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.</p>
49	43-44	9.g.i	<p>The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement.
53	9.h.ii.2		The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	9.h.iii.5.b		The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans," the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are installed properly, and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

57	54	10.d	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.	10.d.v	58	56	10.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.	59	56	10.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for flood management projects" Flood management projects need to be clearly defined.	60	60	10.g.ii.7	Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters..." The method which a pesticide that causes "impairment" to waterbodies needs to be defined.	61	62	10.h.iv.1.c	Staff proposal states: "Provide clean out of catch basins... 24 hours after event" Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."	62	63	10.h.vii.1	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.	63	64	10.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance..." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
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**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do "non-stormwater outfall-based monitoring program" as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a "non-stormwater outfall-based monitoring program". Please revise each mention of "Each Permittee" to "Permittee/Permittees" to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving watershed monitoring in-lieu of outfall monitoring.
65	-	11	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
66	68	11.a	Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernable..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of MS4 major outfalls identified in (1). Please revise (3) to read "The name of all receiving water bodies from those The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11, c. i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
69	69	11.c.i	The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11, c. i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
70	69	11.c.i.4	"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not know if a discharge is illicit until the investigation is completed.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

72	70	11.d.ii	Please revise the proposed language to "At a minimum, each Permittee/Permittees shall initiate an investigation(s) to identify and locate the source within 48 hours of becoming aware of the suspected illicit discharge." Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	"Illicit discharges suspected of sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to "If the source of the discharge is found to be authorized under a NPDES permit..." If the discharge is permitted, then it is not "illicit".
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to "If the source of the illicit discharge has been determined to originate within a Permittee's jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification." "Non-stormwater" discharges do not equate to "illicit" discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to "If the source of the suspected illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall..." Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	Please revise the proposed language "the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion." To "the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board."
78	71	11.e.i	Please revise the first sentence to "Permittee/Permittees, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days..." The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the "days of completion" from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

80	71	11.f.i	Reverse the proposed first sentence to "Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point..." It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71&72	11.f.iii,1&2	Reverse "PPP" to "Hotline". The subject of this item is "reporting hotline requirements".
82	72	11.f.iii	Omit this section. "No Dumping" signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, "The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee." This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to "Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority." Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bio-retention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	<p>RB staff proposed language requires the permittees to “effectively prohibit non-stormwater discharges <i>into</i> the MS4 and <i>from</i> the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges <i>to</i> the MS4 but not <i>from</i> the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge <i>to</i> the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</p> <p>This is further illuminated by the section on Effective Prohibition on Non-Stormwater Discharges²:</p> <p>“Section 402(d)(3)(B)(iii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water</p>

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges
² 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
2	3	III.A.3.b	<p>discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</p> <p>The rulemaking goes on to say that the permit application:</p> <p>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed.</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mo15.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p> <p>This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

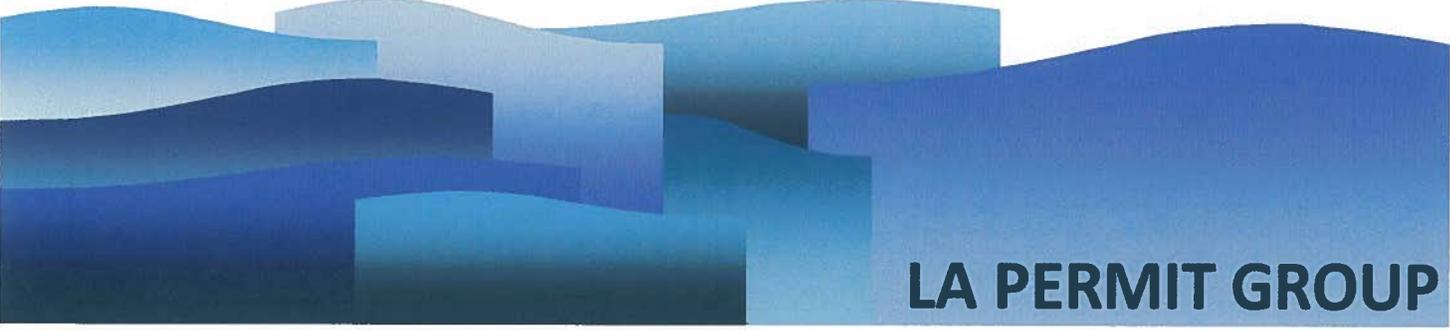
No.	Page	Citation	Comment
			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
15	Table X	General	Enforcing NPDES permits issued for the various NSWDs referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWD category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period



LA PERMIT GROUP

July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

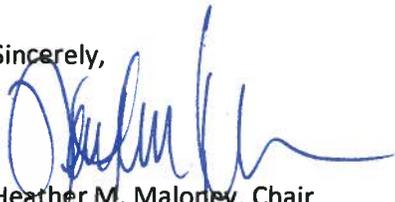
Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfield, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal’s decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court’s opinion addressed two key issues for California’s MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive, flowing style.

Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

CITY OF MONTEREY PARK

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Teresa Real Sebastian
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City Clerk
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City Treasurer
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July 19, 2012

Ivar Ridgeway (and Electronically to LAMS42012@waterboards.ca.gov)
Los Angeles Regional Water Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Tentative NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Monterey Park is an active and participating member of the Los Angeles Permit Group and hereby incorporates their comments into this letter by reference. While the Regional Board's ongoing effort to engage the permittees subject to the Tentative Permit and solicit comments is greatly appreciated, there have been a number of comments the City feels have not yet been satisfactorily addressed. The scheduled adoption hearing is on September 6 and 7, 2012 which leaves the Regional Board staff with little time to address the all of the comments being submitted. Recognizing the time limitations, we are limiting the comments of this letter to items of primary concern.

1. The opening section (Facility Information, Table 2) that lists the names of the contact person, thus incorporating the names into the MS4 permit is inappropriate as city personnel are very likely to change over the next 5 or more years. Only the city names and addresses should be listed.
2. Section D.1.b.i (page 56) indicates that all the Minimum Control Measures must be implemented within 30 days of the effective date of the permit. This is not realistic given that the permittees are being given 6 months in which to decide whether to implement the MCMs or follow the Watershed Management Program as described separately within the Tentative Permit.
3. Regional Board staff is to be complimented for their effort to facilitate compliance with the Trash TMDL. Monterey Park has now installed some 300 full and/or partial trash capture devices in catch basins within the Los Angeles River Watershed. This is in addition to ongoing Daily Generation Rate studies. There is a degree of uncertainty with Section E.5.b.i(2) (118) and clarification will be improved by inserting (see italics): "(2) Partial Capture Devices *which may include partial installation of full capture devices* and Institutional Controls."

4. Previously submitted in a separate letter was a request for the Regional Board to revise the Receiving Water Limitations (RWL). This is a critical issue for the city. Under the current wording, any exceedance whether: (1) under an existing TMDL, (2) listed on the 303d impaired waterbody list but where no TMDL is yet developed, or (3) not listed as an impairment but listed as a water quality standard would subject permittees to RWL requirements. For example, runoff would now be immediately subject to limitations on such “pollutants” as aluminum, sulfates, chloride, etc. If these pollutants were priorities, TMDLs or monitoring would already be in place; and to the city’s knowledge, no outfall monitoring has yet occurred. Cities must be given a reasonable opportunity to determine the current level of these “pollutants”, and then develop economically and technically feasible control measures, preferably through an iterative adaptive approach. We understand that several statewide efforts are underway and the Regional Board is urged to review the proposed wording of these efforts and remedy the current deficiencies in the Receiving Waters Limitations wording.

We feel that the Receiving Water Limitations Language must be amended. As written, the City can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires cities to implement an iterative process to improve BMPS to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.

Previously, municipal stormwater permittees had understood that the receiving water limitations language in conjunction with Board Policy (WQ 99-05) established an iterative, adaptive management approach as a basis for permit compliance. However, since the permit language does not actually say that the permittee is in compliance while engaging in the adaptive management process, a federal court has determined that the permit violation still exists while the permittee is taking actions to address the problem.

On July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found that the Defendant County had violated the receiving water limitations, despite its compliance with the adaptive management process. The Court said that the obligation to not cause or contribute to violations of receiving water limitations is separate and distinct from the obligation to participate in adaptive management. Thus, a municipality is in violation of the permit if its discharges cause or contribute to an exceedance of a water quality standard, even while improving its management practices and control measures. This is a fundamental change in interpretation of policy. The Court’s decision also contrasts sharply with the Board’s own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she

articulated the collective understanding that a violation of the permit would occur only when a municipality fails to engage in a good faith effort to implement the iterative process to correct the harm.

An MS4 permittee should not automatically be in violation of the permit if there is an exceedance; the exceedance may not have even been caused from an MS4 discharge. The permit must acknowledge that MS4 discharges are not the only source of pollutants in the water and regulate accordingly. If monitoring demonstrates that a particular compliance strategy is not working through no fault of the discharger, then the discharger must have time to identify and implement a new strategy before being held liable for water quality alterations that may be beyond its control. To address this problem, the City recommends that the proposed CASQA language submitted by the LA Permit Group be used in lieu of the current language.

5. Under the construction provisions for sites over 1 acre. Since the SWPPP program (GCP) is in place and applications can now be electronically filed by contractors and since this is a State Program, and since the State collects permit and inspection fees, cities should not be responsible for ensuring the SWPPP application process and the increased number of inspections unless the State provides a portion of the fees as reimbursement to cities for the additional costs.
6. Under Section D.7.h.ii.(8), the verification that contractors have obtained various State permits (401, 404, 1600, etc.) should not be the responsibility of the city. As owner/operator of the flood control channels where the actual connections will be made, verification of these permits should be the responsibility the Army Corps of Engineers or the County Flood Control District.
7. Attachment A: Please provide definitions for: Construction Activity, Industrial Parks and Commercial Strip malls, Trash excluders, AMAL and MDAL (page G-13).
8. Item (4) on page 70: This item should be eliminated. It forces an evaluation of green roofs for every project, whether or not a green roof is proposed.
9. Section VI.D.7.f (page 84): land clearing for fire protection should not be considered a construction activity.
10. The whole of the new outfall monitoring program represents an extremely expensive endeavor. This needs to be completely revised in order to make it economically viable. As part of several Los Angeles River TMDL groups, Monterey Park is facing a shared cost of hundreds of thousands of dollars in monitoring costs. The costs for this additional outfall monitoring which will include costs for post-construction treatment system evaluation and even more additional costs for pyrethroid studies, even if limited to HUC-12 units of approximately 20 square miles of tributary area will be unachievable.. Attachment E should be listed as "items that could be included in

a monitoring plan” and this program will then be developed over the next several years.

11. Section III.A.1 (page 26). “- - prohibit non-storm water discharges through the MS4 - -”, should be changed to: “- - prohibit non-storm water discharges into the MS4 - -”. Leaving the wording as is would require permittees to discern non-exempt discharges within comingle flows for upstream sources outside the jurisdiction of the permittee.

12. The entire section ix (page 103) dealing with sanitary sewers should be omitted. Sanitary sewer system operations and maintenance are already addressed by an existing WDR.

Finally, Monterey Park hereby incorporates the legal comments being submitted on behalf of the City of Signal Hill, excluding those comments dealing solely with that city’s submittal of a separate Report of Waste Discharge.

Thank you in advance for consideration of these comments. Please call Amy Ho at (626) 307-1383 if you have any questions or comments.

Sincerely,



Paul L. Talbot
City Manager

CHERI KELLEY
Mayor
LUIGI VERNOLA
Vice Mayor
MICHAEL MENDEZ
Councilmember
MARCEL RODARTE
Councilmember
LEONARD SHRYOCK
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July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
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Dear Mr. Ridgeway:

The City of Norwalk ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001) ("Permit"). The LA Permit Group has submitted comments regarding the Permit, which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Norwalk, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. See *Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is

mandatory. See, e.g., *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) (“the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.”) For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City’s due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. For example, city runoff would now be immediately subject to limitations on such “pollutants” as aluminum and iron. Cities must be given a reasonable opportunity to determine the current level of these “pollutants”, and then develop economically and technically feasible control measures, preferably through an iterative adaptive approach.

This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. If State agencies are granted this approach, municipalities should be granted the same. Otherwise, cities will be potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the "disaggregation" of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution and the City's Police Power

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article XI, section 7 of the California Constitution also guarantees municipalities the right to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." See also *City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. See *Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. See *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309

(1998) (Preemption of police power does not exist unless "Legislature has **removed** the constitutional police power of the City to regulate" in the area); see Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a "super municipality" responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the "Maximum Extent Practicable" ("MEP") standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. See *City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);

- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

We would like to draw particular attention to the following items that shift responsibility from other agencies to the permittees:

- Under the construction provisions for sites over one (1) acre. There are overlaps in SWPPP applications and inspections. Permittees should not be responsible for ensuring the SWPPP application process and the increased number of inspections being mandated. This should only be imposed on the City if the State provides the City with a portion of the fees already collected as reimbursement to cover those additional costs.
- Under Section D.7.h.ii.(8), the verification that contractors have obtained various State permits (401, 404, 1600, etc.) should not be the responsibility of the city. As owner/operator of the flood control channels where the actual connections will be made, verification of these permits should be the responsibility of the Army Corps of Engineers or the Los Angeles County Flood Control District.

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (See, e.g., Permit at pp. 38-40.) These are unfunded requirements, which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections to be conducted by the City. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Outfall Monitoring Program Is an Unfunded Mandate That Should be Revised

Additionally, the newly proposed outfall monitoring program in its entirety represents an extremely expensive endeavor. This needs to be completely revised in order to make it economically viable. As part of the Coyote Creek/San Gabriel River Metals TMDL, Norwalk is looking at a shared cost of hundreds of thousands of dollars in monitoring

costs. The costs for this additional outfall monitoring which will include costs for post-construction treatment system evaluation and even more additional costs for pyrethroid studies, even if limited to HUC-12 units of approximately 20 square miles of tributary area will be unachievable. Attachment E should be listed as "items that could be included in a monitoring plan" and this program will then be developed over the next several years.

C. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

D. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

"(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that

could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board’s failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee’s discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. See Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Co-Permittees

The Regional Board cannot require the City to enter into agreements or coordinate with other co-permittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitttees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. See Water Code §§ 13374 and 13377. The Permit creates the

potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include "[e]conomic considerations" with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. See Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the co-permittees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

9. The San Gabriel River Reach 1 Metals TMDL

As you are aware, the City of Norwalk is currently the Chair of the Coyote Creek and San Gabriel River Reach 1 Metals TMDL Technical Committee and we are pleased with the Regional Board staff's efforts to allow permittees subject to this USEPA TMDL to prepare a Watershed Implementation Plan in lieu of the Time Schedule Order as

originally proposed in the original permit drafts. The city is also pleased to see that the Regional Board's intent to recognize interim efforts as equating to compliance. Having said that, just exactly how these efforts will be recognized is still too vague and this needs to be further addressed (which will be contained in the Implementation Plan submitted to the Regional Board in early 2013).

Also, the city is concerned that the final TMDL goals will be strict numeric limits. For the purpose of this MS4 permit, it is requested that the final numeric limits be listed as iterative adaptive goals and that as the final date of the implementation period approaches, the Basin Plan be re-opened to review the progress to date and make a determination at that time whether to establish strict numeric limits or a continuation of the iterative adaptive process.

10. It is Unclear How Minimum Control Measures and the Watershed Management Program Interact

It is not clear from the Tentative Permit whether the intent is for cities such as Norwalk, which are subject to a US EPA TMDL to be given the option of implementing the Minimum Control Measures (as all other permittees are) or developing a Watershed Management Program. Section E.3.a (page 114) appears to require cities subject to US EPA TMDLs to use only the Watershed Management Program option (page 45) and conflicts with Section C.1.b (same page) where "participation in a Watershed Management Program is voluntary..."

11. Additional Comments and Suggestions for Revision

- Attachment A: Please provide definitions for: Construction Activity, Industrial Parks and Commercial Strip malls. Also provide a definition of "trash excluder."
- Item (4) on page 70: This item should be eliminated. It forces an evaluation of green roofs for every project, whether or not a green roof is proposed.
- Section h.viii (page 102). This section requires installation of trash excluders in Priority catch basins. Trash is not listed as impairment for either Coyote Creek or Reach 1 of the San Gabriel River. Since these water bodies are not listed as impaired, placement of these devices should be voluntary.

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. Norwalk's dwindling general funds simply cannot take the financial hit this Permit is poised to impose on the City. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Thank you in advance for consideration of these comments. If you have any questions or comments, please call Dan Garcia, City Engineer, at (562) 929-5727, or Adriana Figueroa, Administrative Services Manager, at (562) 929-5915.

Sincerely,



Mike Egan
City Manager

cc: Kurt Anderson, Community Development Director
Dan Garcia, City Engineer
Adriana Figueroa, Administrative Services Manager
John Hunter, John Hunter & Associates
Steve Dorsey, City Attorney



July 23, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comment Letter – Draft Los Angeles County MS4 NPDES Permit

Dear Madam Chair and Members of the Los Angeles Regional Water Quality Control Board:

The incorporated cities on the Palos Verdes Peninsula, the Cities of Rancho Palos Verdes, Palos Verdes Estates, Rolling Hills Estates and Rolling Hills, have been working cooperatively on TMDL implementation and expect to continue to collaborate as we implement this challenging new municipal stormwater permit. We want to work with your staff to protect and restore the quality of our valuable water resources in a manner that is most effective and takes advantage of the characteristics of our unique community.

We are a coastal community proud of our beautiful coastline and its historically high water quality as evidenced by the recent Heal the Bay Annual Report Card which listed three of the beaches on the Peninsula out of six honor roll beaches in Los Angeles County. The major land use designation on the Peninsula is low density residential with significant portions of open space, including more than 1,400 acres of nature preserves and an extensive network of dedicated recreational trails. Drainage from the Peninsula is conveyed via a natural soft bottom canyon system in conjunction with structured storm drain systems in portions of the more developed areas, and these systems are intertwined and cross-connected.

We have five key concerns with respect to the draft Los Angeles County MS4 Permit.

1. Prioritize Most Cost Effective Solutions

This permit proposes an ambitious new monitoring program while at the same time requiring significant new prescriptive implementation and administrative requirements throughout all aspects of the permit—the extent of the prescriptive nature of this permit is evidenced in the sheer length alone. The permit proposes an extensive list of substantial new requirements without regard for the need to prioritize water quality objectives and municipal resources, without consideration for unique geography and

geology, and without credible scientific evidence that the additional requirements will actually achieve a set of prioritized water quality objectives. As noted in the Executive Summary of the Little Hoover Commission Report¹

“Urban stormwater is a vexing problem with costly solutions, yet the state has not developed an adequate system for assessing and prioritizing this problem and other non-point source pollution problems In addition to the difficulty in pointing resources toward the most pressing problems, the boards fail to use any type of cost-benefit analysis to help determine priorities. . . . Simply ignoring the costs of compliance means that, too often, the price is not worth the prize when the boards set tough standards.”

It is our grave concern that this permit does not do a credible job of providing permittees the opportunity to prioritize limited fiscal resources and to direct them toward the most critical water quality issues in the most cost effective manner.

2. Adopt “Good Faith” Language

In light of the challenges so clearly articulated by the Little Hoover Commission, it is essential that the Receiving Water Limitations language in the draft permit be amended. As written, permittees can be deemed in violation of the permit and become vulnerable to costly citizen suits even if they are acting in good faith to correct exceedances of water quality standards. Because of this language, even though cities are required to follow an iterative process to implement additional measures based on feedback from the results of water quality monitoring to increase as necessary the effectiveness of implementation measures, a city may be found in violation of the permit during the iterative process. This was a serious defect in the last permit and is an issue being considered at the statewide level as the State Water Resources Control Board considers comments on Receiving Water Limitations language in the context of the proposed draft CalTrans Stormwater Permit and the Phase II Municipal Stormwater Permit. The California Stormwater Quality Association (CASQA) has proposed a cure to this problem in language proposed in its comment letters on the CalTrans Stormwater Permit and the Phase II MS4 Permit—we support the use of language consistent with the CASQA proposed language.

3. Rely on Available & Effective Science

Similarly, requiring adherence to strict numeric water quality limits for compliance with final TMDL objectives does not acknowledge the scientific uncertainty and limitations in the data and models used to adopt the TMDLs in the first place, and does not address the difficulties inherent in developing cost-effective measures for achieving the limits. The Little Hoover Commission report aptly captures this problem as follows:

“California’s current system for ensuring water quality does not rank the biggest threats to water quality and systematically match its finite resources to address the most serious of them using the tools of scientific and economic analysis.”

¹ Little Hoover Commission, January 2009. Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards.

“The Commission recommends making greater use of science in determining the cause and remedies to water contamination as well as economic analysis to inform which options offer the greatest improvement within the available resources.”

“Much more research is needed—the boards face a difficult challenge in regulating non-point sources such as stormwater, as there remains a lack of knowledge regarding the best, most cost-effective methods for reducing this kind of pollution—but the boards have failed to use science available to them in an efficient, effective manner.”

4. Integrate and Focus on Relevant Monitoring Requirements

Finally, we are alarmed by the extensive new monitoring provisions that go far beyond what we had expected to be the focus of this next permit--integrated TMDL monitoring. The Peninsula Cities have been focused on coordinated monitoring for the Machado Lake Nutrient and Santa Monica Bay Bacteria TMDLs. We fully anticipated that the monitoring requirements in the next permit would allow us to continue that focus by amending our monitoring programs to incorporate the new TMDLs which have been promulgated for these water bodies and for Los Angeles Harbor, as we believed that TMDLs were the high priority focus of the Regional Board. Instead the 72-page monitoring section of the draft permit introduces a myriad of new monitoring requirements completely outside the monitoring requirements in the adopted TMDLs.

5. Provide Time for Adequate Review

While we appreciate the access and opportunity that Board staff provided to the LA Permit Group during the time that this draft permit was under development, and the opportunity to provide input, significant issues remain unresolved and many more have become evident now that this draft permit has been released in its entirety. A forty-five day review period for a 500-page permit is hardly adequate and has not provided us enough time to fully review and digest all the interrelated parts of this permit, to consider the implications, and provide complete and comprehensive comments. We have however used the limited time as best we could to begin to develop a categorized list of comments that are attached for your consideration; they are by no means comprehensive and there are significant elements of the draft permit which we simply have not had sufficient time to review and analyze.

We appreciate the opportunity to provide these comments and urge the Board to review the comments provided by all the permittees and to issue a revised draft permit for additional comment prior to adopting a final permit.

Sincerely,



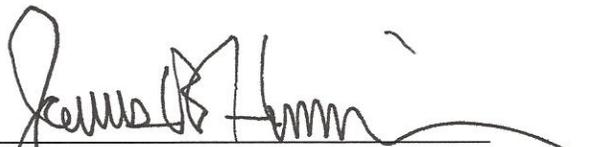
Greg Grammer, Assistant City Manager
City of Rolling Hills Estates



Anton Dahlerbruch, City Manager
City of Rolling Hills



Allan Rigg, Director of Planning and
Public Works
City of Palos Verdes Estates



James B. Hendrickson, Interim Director
of Public Works
City of Rancho Palos Verdes

Attachment

Copies:

Charles Stringer, Vice-Chair
Francine Diamond, Board Member
Mary Ann Lutz, Board Member
Madelyn Glickfeld, Board Member
Maria Camacho, Board Member
Irma Munoz, Board Member
Sam Unger, Executive Officer
Ivar Ridgeway, Board staff

Attachment: Peninsula Cities Detailed Comments on

Draft NPDES Permit for MS4 Discharges within LA County as noticed on June 6, 2012.

“A” are high priority comments specific to the Palos Verdes Peninsula

“B” are high priority comments generally applicable to most Permittees

“C” are administrative issues that need to be resolved

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
A	1	III.A.3.a. ii.-vi.	29	The listed non-storm water discharges which are conditionally exempt within an Areas of Special Biological Significance (ASBS) should also be conditionally exempt in areas outside an ASBS, i.e., anywhere in the LA Basin. The same concerns for structural stability, slope stability and naturally occurring flows are present on the Palos Verdes Peninsula as they are in ASBS in Malibu, this is especially clear from the recent landslide at Whites Point in San Pedro, as well as the active landslide areas on the Palos Verdes Peninsula.	Add these conditionally exempt non-stormwater discharges from III.A.3.a.ii.-vi. to the list in III.A.2.b.
A	2	III.A.1.a. and III.A.2	26 - 27	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>We do not understand the meaning or intent of the “through” language or how it could be practically or effectively enforced. Once a prohibited discharge enters the MS4 it mixes with other permitted or conditionally authorized flows making it impossible to address the prohibited discharge separately. It is only</p>	Substitute the word “to” or “into” for the word “through” in both Part III.A.1.a. and Part III.A.2.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				<p>practical to prohibit a discharge at the point of entry.</p> <p>The required legal authority provisions in the federal regulations at 40CFR122.26 (d)(1)(ii) require legal authority to control discharges to the MS4 but not through the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p style="text-align: center;"><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p>	
A	3	V.	37 - 38	Receiving Water Limitations provisions in this draft tentative Permit must be amended. As written, a	The Receiving Water Limitation language needs to be revised to

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				Permittee can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires Permittees to implement an iterative process to improve BMPS to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.	clarify when a Permittee is in compliance with the Permit. We recommend Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on the CalTrans permit which has been provided in the comment letter from the LA Permit Group.
A	4	VI.C.1.e.	45 - 46	<p>This provision states that:</p> <p><i>Watershed Management Programs shall be developed using the Regional Water Board's Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.</i></p> <p>There are many permittees who have jurisdictional area within multiple watersheds with multiple TMDLs to be addressed. It is not clear from this language whether these provisions allow the option for the creation of a single Watershed Management Program by a group of permittees to address multiple watersheds within those jurisdictional boundaries. At the workshop held on July 9, 2012, Regional Board staff indicated that Watershed Management Programs could be developed by a group of permittees such as those who have previously been working in jurisdictional groups towards TMDL compliance. It may be most effective in terms of municipal resources for a group of</p>	Recommend that language be clarified to explicitly provide the option of development of a Watershed Management Program by one or more permittees which would address multiple watersheds and associated TMDLs at once within those jurisdiction(s)' boundaries.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				permittees with similar land use and geography but which affect multiple watersheds to group together, e.g., the Peninsula Cities, to prepare a joint Watershed Management Program Plan within their defined jurisdictional boundaries.	
A	5	VI.D.6.a.i.3 and VI.D.6.c.i.(2)	67	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite, particularly with respect to hillside areas.	Revise this requirement to subtract the predevelopment runoff volume from the design storm volume to determine the site-specific volume that must be retained onsite.
A	6	VI.D.6.b.i.(1)(k)	68	Single-family hillside homes should not be included in the list of New Development Projects subject to the project performance criteria for water quality flow reduction under VI.D.6.c.. Because the language at VI.D.6.c.i.(1) states that “Each Permittee shall require all New Development and Redevelopment projects identified in Part VI.D.6.b to control pollutants, pollutant loads, and runoff volume emanating from the project site” and single family hillside homes are included under the list in Part VI.D.6.b without a threshold size, the draft permit language as written is requiring hillside home projects of any size to meet the numeric volume control requirements, even though we do not believe this was the intention of Regional Board staff.	Recommend that the special requirements for hillside homes be relocated to a different location within VI.D.6 such as under VI.D.6.a.i. as item (8) so that such projects will not be included in the list of new development/redevelopment projects requiring strict numerical volume runoff reduction.
A	7	V.D.6.b.i.(1)(a)	67	The draft permit lowers the threshold for single family residential projects subject to the numeric design criteria to 10,000 square feet of impervious area regardless of the number of units or the percent lot coverage. To apply numeric design standards to single-family home projects of one or two units adds unnecessary complexity to the design and is an onerous	Recommend that residential developments of one or two units be excluded from the strict numeric design criteria in favor of a simpler LID approach.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				requirement for such projects, especially those with a low percentage of lot coverage.	
A	8	VI.D.6.c.i.(4)	70	<p>The language in this part is unclear and could be interpreted to mean that all projects must consider maximum use of green roofs and rainfall harvest and use regardless of whether retention of the Stormwater Quality Design Volume (SWQDv) has been met by other means such as bioretention and biofiltration. Furthermore even if the SWQDv cannot be met without consideration of green roofs and rainfall harvest and use, there may still be reasons of infeasibility that apply to use of these devices:</p> <p>Green roofs may not be feasible for a number of reasons including but not limited to:</p> <ul style="list-style-type: none"> • Areas within Very High Fire Severity zones where the green roof installation runs counter to the fire protection guidelines • Use of green roofs may inhibit the Fire Department’s ability to ventilate a structure/utilize and access the roof for fire suppression • Some pre-existing neighborhood compatibility/design standards and CC&Rs specify require roof pitches that are steeper than what would be technically feasible for application of green roofs. • Use of green roofs may compete with use of solar roofs which provide greenhouse gas reduction 	<p>Recommend replacing the word “maximum potential for” with “feasibility of”, so that this provision would read:</p> <p>“When evaluating the potential for on-site retention, each Permittee shall consider the <i>feasibility of</i> evapotranspiration from green roofs and rainfall harvest and use if the SWQDv cannot be met by other means.”</p> <p>This would then clarify that the Permittee has discretion to determine feasibility and will be able to take into account a variety of issues including: building codes, fire hazards and required approvals by the Fire Department, the sophistication of the property manager, and other competing environmental benefits without explicitly listing in the MS4 Permit all the possible infeasibility issues with respect to green roofs and rainfall harvest.</p>

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				Maximizing rainfall harvest could be interpreted to require use of cisterns in situations where the occupant or property manager is not technically sophisticated enough to ensure the systems are properly maintained when use of rain barrels is more appropriate, e.g., for a single-family residence application.	
A	9	VI.D.6.c.v.	75	<p>Because this draft permit includes all projects of one acre or more and 10,000 sf of impervious surface in the list of categories for new development/redevelopment criteria, large single family home projects and hillside homes (if the correction is not made) may now be subject to these hydromodification requirements whereas under the previous permit they were not because the peak flow control requirement for natural drainage systems only applied to housing developments of 20 units or more.</p> <p>The short 45 day review period for this permit has not allowed sufficient time to consult a hydrologist to determine what the cost of such a required study to meet the new Interim Hydromodification Control Criteria would be and how that would impact the cost of new development or redevelopment for a single family home project of just one unit.</p>	Exempt single family home projects of just one unit from the interim hydromodification requirement until the adoption of the State or Regional Water Board final hydromodification policy or criteria-- this will provide for sufficient review time to consider what approach is appropriate for projects of one unit. In the mean time single family hillside homes would still be required to meet the narrative requirements for hillside homes to conserve natural areas, protect slopes and channels and divert roof runoff and surface flow to vegetated areas, and those which meet the 10,000 sf impervious surface and 1 acre of disturbed area threshold would also be subject to the water quality/flow reduction numeric standards for the 85 th percentile storm.
A	10	VI.D.6.d.iv.	81	The requirement for implementing a tracking and enforcement program for private development and redevelopment projects is a significant new	Exclude single-family residential projects from annual reporting requirements i.e. from the

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				requirement as it will demand a significant dedication of staff resources for administrative activity. This is also onerous for single-family residential projects, in effect requiring homeowners to submit a letter every year and follow up by City staff if reports are not submitted.	requirements at VI.D.6.d.iv. (d), and (e). The Permittees would still maintain a record in the database of the project in accordance with (a) so that when future modifications to the project site occur via building permit, the permittee can verify the condition of the structural BMP as part of subsequent redevelopment projects on the property and ensure that the effectiveness is maintained over the long term without annual reporting by the homeowner.
A	11	VI.D.7.f	84	Vegetation/brush clearing for fire prevention and control should not be considered a construction activity subject to the provisions of Part VI.D.7. In very high fire hazard areas vegetation/brush clearance to provide defensible space is an annual requirement by LA County Fire Department.	Modify the statement to read: "The requirements contained in this part apply to all activities involving soil disturbance with the exception of agricultural activities <i>and fire prevention and control activities</i> ".
A	12	Attachment E		Attachment E represents an enormous cost and goes far beyond what would be required for an integrated TMDL monitoring program. More time is needed to provide detailed comments specific to the Palos Verdes Peninsula	Recommend this Attachment be advisory in nature until permittees and the Regional Board can further discuss.
A	13	Attachment G		This section is related to Attachment E and introduces numerous pollutants that now will need to be tested for. More time is needed to provide detailed comments specific to the Palos Verdes Peninsula	Similarly, this should only be advisory in nature at this time
A	14	Attachment J		More time needed to provide detailed comments specific to the Palos Verdes Peninsula	
A	15	Attachment M	M-5	Footnote 7 states that final receiving water limitations	An additional table is needed

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location. We have previously provided to Regional Board staff information on which members of our jurisdictional groups have responsibility for which monitoring locations.	showing the responsible agencies for each individual shoreline monitoring location.
A	16	Attachment M C.2.	M-8	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data from mass emissions stations to which none of the Peninsula cities are tributary. Land use on the Peninsula is significantly different than in the areas from which the data was collected. Monitoring of stormwater discharges from the Peninsula may very well indicate that the Peninsula cities do not cause or contribute to the DDT and/or PCB impairment in Santa Monica Bay. However because the TMDL has been translated into the Permit using only the mass-based waste load allocation applied to the entire area of Los Angeles County, the Peninsula cities will be obligated to wait until the entire LA Basin is in compliance to establish attainment of the TMDL waste load allocations.	Include the concentration-based sediment targets from Table ES-1 of the TMDL as concentration-based Waste Load Allocations in the MS4 Permit normalized for organic carbon (OC): DDT: 23 ng/g OC PCBs: 7 ng/g OC And to provide a mass-based option for compliance such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the final WLAs should also be expressed as an annual mass loading per unit area, e.g., per square mile.
B	17	III.A.4.d.iii.	31	For municipalities to “provide for diversion of non-storm water discharge to the sanitary sewer” is not the appropriate language and implies that the MS4 permittee should bear the cost and responsibility for complying with this requirement which responsibility is properly borne by the discharger. Furthermore, discharge of certain pollutants to POTW’s may not be permitted by the POTW operator, which is often not	Substitute “require the discharger to obtain a permit and connect the non-storm water discharge to the sanitary sewer system if feasible”

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				the MS4 Permittee. (throughout)	
B	18	III.A.4.d.iv	31	For municipalities to “provide for treatment” of a non-storm water discharge is inappropriate use of public funds unless it is a discharge generated by the activity of the MS4 Permittee. Instead the discharger must be required to obtain a permit and connect the discharge to the sanitary sewer, or to treat the discharge, but that would fall under “impose additional conditions”	Strike this provision as it is already covered under “impose conditions in addition to those in Table 8” at ii.
B	19	VI.A.3.a.	40	<p>The Permit states that <i>“Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this order”</i>.</p> <p>This is an impossible permit demand. The scope of this tentative draft Permit is unprecedented in its demands on the fiscal resources of municipalities and it is impossible for municipalities to secure the fiscal resources to meet all the requirements of this order. Municipalities have a myriad of other obligations which also place demands on fiscal resources in an environment of diminishing budgets. Municipalities must necessarily balance limited fiscal resources among competing demands and we will be obligated to prioritize those demands.</p>	Delete provision VI.A.3.a. as it establishes an impossible requirement, such a requirement is not in the existing permit, and no basis or authority for making this requirement has been provided by Regional Board staff.
B	20	VI.A.14.h	44-45	Trash TMDLs typically provide that the zero trash objective is functionally achieved so long as certified full capture devices treat <i>up to</i> the 1-year, 1-hour storm. Yet the enforcement provisions for trash TMDLs indicates that violations are limited to the days of a storm event of <i>greater than</i> 0.25 inches.	Please clarify how this provision with respect to enforcement will apply in instances where a permittee has complied with a final trash TDML via installation of certified full capture devices which are not designed to control a storm event of greater than the 1-year, 1-hour storm.
B	21	VI.C.3.b.iii.(3)	50	We agree that watershed control measures may	Please clarify that such projects are

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				include stream and/or habitat rehabilitation or restoration projects where they will contribute to demonstrable improvements of the physical, chemical and biological receiving water conditions.	also appropriate candidates for retrofit for purposes of offsite volume mitigation by so indicating in VI.D.6.c.iii(4)(e).
B	22	VI.C.6.a.i.,	54	<p>States that “Permittees in each WMA shall implement an adaptive management process <i>annually</i> during the permit term, beginning in 2015, . . .”</p> <p>This conflicts with Appendix F Fact Sheet, page F-44 which states that “Permittees in each Watershed Management Area must implement the iterative process at least twice during the permit term, adapting the Watershed Management Program to become more effective, . . .” also Table F-5 in the Fact sheet, page F-47 references parts VI.C.6.a.i and indicates that the frequency twice during the permit</p> <p>An annual adaptive management process is too frequent for stormwater as the data supporting that adaptive process is not sufficiently robust over one storm season to make management decisions. It is also time consuming to make changes as a group by committee and is not a practical to revise the Watershed Management Program Plan on an annual basis.</p>	There should be only one revision of the Watershed Management Programs required during the Permit term, and only when the monitoring data supporting the adaptive management/iterative process demonstrates that the modification is warranted.
B	23	VI.C.6.b.i.	55	This provision appears to require the individual permittees within a WMA to implement the adaptive management process on an annual basis, i.e., more frequently than the WMA as a whole. The adaptive management/iterative approach and timing should be consistent between individual permittees who are participating in a watershed management program and the watershed management program.	Eliminate the separate jurisdictional requirements of Part IV.6.b. entirely as it is redundant with Part IV.6.a.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
B	24	VI.D.1.b.i.	56	30 days is not a sufficient period of time to implement the minimum control measures. There are many provisions which necessitate lead time, planning and action by the governing body in order to implement. In addition it is difficult for Permittees to find all the required deadlines when they are sprinkled throughout the permit.	Recommend that this language be revised to state Permittee shall within 30 days of the effective date of the permit initiate measures so that provisions of Part VI.D. are implemented in accordance with the Timeline for Implementation of Permit Requirements and then suggest including Table F-5 in the body of the permit at this location, i.e., at VID.1.b.i.
B	25	VI.D.6.c.iii(4)(f)	73	The requirement that offsite projects must be completed within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite project is an impossible expectation for offsite projects of any significant scale, especially if they are being implemented within a different Permittee jurisdiction than where the project being mitigated is located. Municipalities cannot implement retrofit-type offsite projects without a significant portion of the construction funds in hand or committed, so this requirement will effectively limit the scale and effectiveness of offsite projects to those that are very small and can be funded within a narrow window of time to allow for design and construction of the retrofit project within the 4-year window.	Recommend that this requirement be changed to “within 4 years of the certificate of occupancy for the <i>last</i> project that contributed funds toward the construction of the offsite project”.
B	26	VI.D.6.c.vii.	79	The annual requirement that each Permittee prepare a list of mitigation project descriptions and pollutant and flow reduction analyses comparing the expected aggregate results of alternative compliance projects to	This analysis that should be prepared as part of the Report of Waste Discharge for the next permit and could be prepared on a

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				results that would otherwise have been achieved by retaining on site the SWQDv is a significant new undertaking and will require significant technical resources, most likely through outside expertise. Due to the timeframes associated with the mitigation programs, in particular the off-site mitigation projects, such an analysis should not be required every year, but more appropriately once every four-five years in line with the time frame for offsite mitigation timelines and in order to provide meaningful information.	watershed basis if permittees so choose.
B	27	VI.D.6.d.i.	80	Please clarify that the provision that a Permittee may submit documentation that an alternate local Low Impact Development ordinance is equivalent to the Permit requirements can be employed for low impact development ordinances that were not pre-existing to this permit. Some Permittees that have not yet developed a local LID ordinance pending adoption of this Permit may find that it is in the best interests of water quality and the broader interests of the community to develop a local LID ordinance to achieve the same objectives in a manner that is more in keeping with local land use, geography and geology and pollutants of concern/TMDL objectives. If such a local LID ordinance is developed subsequent to the adoption of this permit, then the Permittee should be able to submit the documentation of equivalence to the Executive Officer for review and comment during development of the ordinance so that a finding of equivalence could be made concurrent with the LID ordinance adoption.	Recommend that VI.D.6.d.i.(1) be modified to read: "Documentation shall be submitted within 180 days after the effective date of this Order for local LID ordinances in effect at the time of adoption, and for local LID ordinances developed subsequent to the effective date of the permit a documentation of local equivalence shall be provided to the Regional Board Executive officer for approval prior to final adoption of the local LID ordinance.
B	28	VI.D.7.f	84	The exclusion of routine maintenance activities from the definition of "construction" under the current MS4	Include in the discussion of what activities constitute construction the

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				permit does not appear to have been preserved in Part VI.D.7. Nor is there a definition of “construction” in Appendix A.	following statement from the previous permit: “Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to stormwater, mechanical permit work; or sign permit work.”
B	29	VI.D.7.f	84	Need to exclude landscaping and gardening activities from the definition of construction. Because there is no size limit for construction sites in the draft permit and based on the description of construction activity in Part VI.D.7.f, a homeowner who is gardening or conducting landscape activities that do not require a building permit would be subject to the provisions of VI.D.7.	Recommend excluding activities that do not require a building or grading permit under local ordinance from the requirements of Part VI.D.7. Any potential problems with landscaping activities that result in potential for discharge of soil to the MS4 can be readily enforced through the illicit discharge program rather than the construction program.
B	30	VI.D.7.g.	84-85	The requirement for Permittees to create an electronic tracking system for construction sites one acre and greater is redundant with the State Water Resources Control Board SMARTS tracking system under the General Construction permit. It is a waste of public funds to create a redundant database requirement, especially for largely built-out communities where very few construction projects are large enough to trigger	Provide the option for permittees to meet this requirement by regularly accessing and using the Statewide SMARTS system to monitor the status of construction sites within their jurisdictions. This makes particular sense for permittees that will require a submittal of a SWPPP

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				this requirement—since the Permittees are already required by Part VI.D.7. h.(8) to ensure that coverage is obtained under the General Construction Permit so all such projects would be required to upload their information to the SMARTS system and that information is also readily accessible to Regional Board staff as well.	consistent with the Construction General Permit in lieu of a local Erosion and Sediment Control Plan.
B	31	VI.D.9.b.v.	108	For municipalities to “provide for diversion of the entire flow to the sanitary sewer or provide treatment” with respect to an ongoing illicit discharge is not the appropriate language and implies that the MS4 permittee should bear the cost and responsibility for complying with this requirement which responsibility is properly borne by the discharger	Substitute “require the discharger to obtain an NPDES permit or connect the non-storm water discharge to the sanitary sewer system”
B	32	VI.E.2.c.iii.	113	The statement that <i>if a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO) issued by the Regional Board, it is not the Regional Water Board’s intention to take enforcement action for violations of Part V.A. Receiving Water Limitations</i> does not prevent citizens (third parties) from bringing action against the Permittee pursuant to 33 USC 1365, and may actually increase the ability of third parties to bring action by the explicit statement that the Regional Board does not intend to take enforcement.	Recommend that TMDL requirements should be addressed through Watershed Management Plan revisions and approvals by the Regional Board Executive Officer rather than through a time schedule order.
B	33	VI.E.4.b.	116	Rather than request a Time Schedule Order for State Adopted TMDLs where final compliance deadlines have passed, Permittees should have the option of revising the Watershed Management Plan to include the elements listed in VI.E.4.d. Some TMDL final compliance deadlines will fall near the end of the next permit term or once it has expired while the permit is	Strike the phrase “within 45 days of Order adoption” Add the additional language to the end of VI.E.b.: “or include the information listed in

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				still in effect because the LARWQCB has not adopted a new permit (as is the case right now). The Permittees would not have requested a TSO within 45 days of Permit adoption because at the time the Permittees were in compliance with the interim objectives.	VI.E.4.d.i-vi in its Watershed Management Plan.”
B	34	VI.E.5.b.(c)(i)	118	<p>The language here is not consistent with the language used to establish compliance in the TMDLs. For Machado Lake Trash TMDL the language reads:</p> <p>“Zero will be deemed to have been met if full capture systems have been installed on all conveyances discharging to Machado Lake.”</p> <p>While the Santa Monica Bay Marine Debris TMDL language reads:</p> <p>“Compliance with percent reductions from the Baseline WLA will be assumed wherever properly-sized full capture sytems are installed and properly operated and maintained in corresponding percentages of the conveyance discharging to waterbodies within the Santa Monica Bay Watershed or directly to Santa Monica Bay.”</p>	Need to revise the language in the tentative draft permit at VI.E.5.b.(c)(i) to clarify that it is the MS4 <i>conveyance system</i> that must be serviced by the full capture systems, not “drainage areas”.
B	35	Attachment A	A-5 -6	Definition of Maximum Extent Practicable provided here is not a definition but a set of factors/criteria. As noted on page F-30 of the Fact Sheet, “Neither Congress nor the USEPA has specifically defined the term ‘maximum extent practicable’. Rather, the MEP standard is a flexible and evolving standard.”	Remove Maximum Extent Practicable from the definition attachment and rely instead for an understanding of the term on the discussion in the Fact Sheet on pages F-30 to F-31 which references State Board and USEPA interpretation.
B	36	Attachment A	A-8	In the definition of “Rainfall Harvest and Use”, why is	Revise the definition of “Rainfall

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				only rainfall runoff from a roof included in the category of rainfall harvest and use, it would seem that runoff from other types of impervious surfaces could also be beneficially used for irrigation.	Harvest and Use” to avoid describing the source of the runoff, but simply use the term “rainfall runoff” and leave to the discretion of the Permittees to determine what sources of runoff can be beneficially used for irrigation and non-potable uses.
B	37	Attachment F		More time needed to provide detailed comments	
B	38	Attachment M A.	M-1 through M-7	This discussion in this section devoted to the Santa Monica Bay Beaches Bacteria TMDL creates confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations"—it has effectively reversed the meaning of the terms and has set effluent limitations that are more strict than the receiving water limitations.	Make suggested specific revisions in the following comments.
B	39	Attachment M A.2.	M-1	The language in Part M.A.2. is incorrect as is the title of the table. As defined in Attachment A, page A-8, Receiving Water Limitations are the applicable numeric or narrative water quality objective criterion or limitation for the receiving water . . . Thus water quality objectives or water quality standards are those that apply in the receiving water. Consistent with the TMDL, this table identifies the bacteriological objectives as set forth in Chapter 3 of the Basin Plan and serve as the numeric targets for the Santa Monica Bay Beaches Bacteria TMDL.	Language at A.2. should be revised to read: <i>Receiving Water Limitations are the bacteriological objectives set forth in Chapter 3 of the Basin.</i> The main header in this table should be: <i>Basin Plan Water Quality Objectives (MPN or cfu)</i>
B	40	Attachment M A.3.	M-1	Part M.A.3 mistakenly uses the term “receiving water limitations” to refer to “waste load allocations”. In the Santa Monica Bay Bacteria TMDL the term “allowable exceedance days” is synonymous with “waste load	Throughout A.3. the term “receiving water limitations” should be replaced by the term “waste load allocations”

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				allocations". The Santa Monica Bay Beaches Bacteria TMDL Basin Plan Amendment Attachment A states that "Waste Load Allocations are expressed as allowable exceedance days".	
B	41	Attachment N C.2	N-3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. This should be included in the schedule for attaining interim and final waste load allocations.	Please include an additional statement taken from the Machado Lake Nutrient TMDL in item 3.C.2 which describes the schedule for achieving interim and final waste load allocations: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."
B	42	Attachment K and Attachment N	N-4 through N-9	Attachment K does not adequately clarify responsibility among Permittees for compliance with the VERY complex TMDL. The State Board requested a clarification of this issue from the Regional Board staff in its review of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. Regional Board staff developed and submitted an Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL. This table should be included either in Attachment K or in	Please incorporate into the MS4 Permit the Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				Attachment No to clarify permittee responsibilities.	
B	43	Attachment N E.		The Dominiguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs.	Please include an additional statement from the TMDL in Attachment N Part E: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies."
C	44	Table 2	1-8	Contact information should not be included in permit except in the form of a position/title, e.g., public works director, as it will change over time, some information is already incorrect	Delete detailed contact information and include only position/title to whom information or correspondence should be directed.
C	45	II Finding A	13	Primary pollutants of concern should be those identified on the 303d list for receiving waters in the LA Basin have been identified as being impaired, not a twelve-year-old receiving water impact report.	Strike the reference to LACFCD Integrated Receiving Water Impacts Report from 1994-2000 and substitute reference to 303d list
C	46	II Finding I	19	Finding I indicates that the Fact Sheet provides background and rationale for the permit requirements and incorporates the Fact Sheet into the Order as Attachment F, however many elements of the Fact Sheet rather than being explanatory of policy or background restate or expand the implementation requirements in the permit and in some cases statements in the fact sheet are inconsistent or contradictory with the main body of the permit.	Eliminate inconsistencies between Attachment F and main body of permit by eliminating duplicative elements from Fact Sheet. This will eliminate the need to update the Fact Sheet as revisions are made to the Permit.
C	47	III.A.1.d.iv.	27	Important definitions should not be in footnotes, but should be included in Attachment A. Footnote 5 states that uncontaminated groundwater infiltration is distinguished from "inflow", however the term "inflow" is not defined—typically it is used to refer to stormwater which infiltrates the sanitary sewer collection system, and if that is the reference this case	Delete footnote 5. Move definition of "groundwater infiltration" from footnote 5 to Definitions in Attachment A. Eliminate reference to "inflow" as it is not relevant in this situation.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				it doesn't really seem to be relevant.	
C	48	III.A.2.b.vi also Table 8	28	To include street washing as a conditionally allowed conflicts with the Industrial/Commercial Source Control BMPs in Table 10 which only allows sidewalk rinsing in accordance with LARWQCB Resolution No. 98-08. Patio washing should be allowed in order to maintain sanitary conditions in outdoor eating areas as long as high pressure, low volume spray washing is used.	Substitute "patio" for "street" so that sidewalk and patio rinsing are conditionally allowed but not street washing. Also include patio washing in the Table 10 discussion of sidewalk washing for industrial/commercial source control BMPs.
C	49	III.A.4.d.i.	31	Effectively prohibit as defined in footnote 18 actually represents two different actions, one of which is to prohibit the discharge, the second of which is to require that the discharger obtain an NPDES permit in which case the discharge becomes authorized. Requiring that the discharge obtain an NPDES permit may be in some instances be the most appropriate action, especially if the discharge falls within the scope of an existing general permit wherein the discharger should have already obtained coverage.	Eliminate footnote 18 as a definition, and instead split III.A.4.d.i. into two possible actions: <ul style="list-style-type: none"> i. <i>Prohibit the non-stormwater discharge or</i> ii. <i>Require that the discharger obtain coverage under an NPDES permit</i> iii. <i>Impose conditions in addition to those in Table 8 . . .</i>
C	50	III. Table 8	33	Please clarify what is meant by "segregate"	Give examples of measures that could be taken to segregate non-storm water discharges from potential sources of pollutants
C	51	VI.A.14.f.	44	The definition of "effluent limitation" here is different than the definition in Attachment A which draws on 40CFR122.2	Define effluent limitation only in Attachment A
C	51	VI.C.1.e. and VI.E.3.b.	46 and 114	Part VI.E.3.b. provides that: <i>Each Permittee subject to a USEPA Established TMDL may either individually submit a Watershed Management Program Plan, or may jointly submit a plan with all Permittees subject to the WLAs contained</i>	Please make these two provisions consistent with each other on multiple points as follows: Clarify at VI.C.1.e. that a Permittee

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				<p><i>in the USEPA established TMDL.</i></p> <p>So by implication VI.E.3.b. suggests that it is possible for a Permittee to submit an individual Watershed Management Program Plan, even though it is not explicitly stated in VI.C.1.e.</p> <p>However Part VI.E.3.b. seems to suggest that in order to submit a joint Watershed Management Program Plan that all Permittees subject to the USEPA WLAs must participate, which may be impossible to achieve since a Permittee cannot be forced to participate in a joint Watershed Management Program Plan.</p>	<p>may submit an individual Watershed Management Program Plan.</p> <p>Clarify at VI.E.3.b. that a Permittee may jointly submit a plan with <i>some or all</i> Permittees subject to the WLAs contained in the USEPA established TMDL.</p>
C	53	VI.D.6.b.i.(g)	68	<p>The website link provided for the Green Infrastructure Green Streets guidance was not sufficient to locate the document. Please confirm that this is the document that is referenced, and if not, clarify which is the intended reference:</p> <p><i>Managing Wet Weather with Green Infrastructure, Municipal Handbook: Green Streets. Prepared by: Robb Lukes, Christopher Kloss, Low Impact Development Center. December 2008 EPA-833-F-08-009</i></p>	<p>Please provide a more effective reference for the USEPA guidance document on Green Streets than a website link by referencing exact document title, authors, year of publication and USEPA document ID number.</p>
C	54	VI.D.7.f	84	<p>If this description of construction is to be utilized for identifying what constitutes construction for all of Part IV.D.7, then it should appear early in this part and not buried in the middle of the section. Where it is currently located it applies only to construction sites one acre or greater and there is no explanation of what constitutes construction for sites less than one acre.</p>	<p>The narrative in VI.D.7.f should be moved to the Applicability section at VI.D.7.c so that the applicability subsection actually discusses what types of activity constitute construction and are subject to the provisions of VI.D.7.</p>
C	55	VI.D.7.a.iv.	83-92	<p>The hierarchy/outline structure of the Development</p>	<p>Make IV.D.7.e. be entitled</p>

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				Construction Program under IV.D.7 is very confusing and difficult to follow. VI.D.7.d. is entitled “Requirements for Construction Sites Less than One Acre”, however there is not a subsequent subheading entitled “Requirements for Construction Sites of One Acre or more”. There is also a redundant/unnecessary subheading at Part VI.D.7.d.i. entitled “For construction sites less than 1 acre, each Permittee shall:”, but there is no subsequent subheading Part VI.D.7.d.ii at all. There is a statement under under VI.D.7.c. that Parts VI.D.7.e-j apply exclusively to construction sites 1 acre or greater, so by implication parts VI.D.7.k and l apply to all categories, but that should be clarified via corrections to the outline structure.	“Requirements for Construction Sites of One Acre or More” and demote the current subheadings of VI.D.7.e-j below this new IV.D.7.e heading to be VI.D.7.e. i.-vi. Do not assign an outline number/heading number for the statement “For construction sites less than 1 acre, each Permittee shall:” but simply allow that statement to be the introductory sentence to IV.7.d. Promote outline items VI.D.7.d.i.(1)-(4) up an outline level so that they become VI.D.7.d.i.-iv.
C	56	VI.D.8.h.ii.	100	Water removed by dewatering from solid material removed from the MS4 (including street sweeping material) could be disposed by percolation rather than requiring that the water be disposed via sanitary sewer—this would be analogous to the provision in VI.D.8.h.x(3)(b) where residual water from BMP treatment control devices can be “applied to the land without runoff”.	Add a third disposal option to VI.D.8.h.ii as follows: (3) Applied to the land without runoff
C	57	VI.D.8.h.x.(3)	103	The term “residual water” has a footnote number 35 stating that it is to be defined in Attachment A Definitions, however no definition of “residual water” is provided in Attachment A.	Provide a definition of “residual water” in Attachment A.
C	58	VI.D.8.k.i and ii	106	The language in the draft permit requires Permittees to train contractors on the requirements of the MS4 Permit and on pesticide use. Permittees should have the option of requiring contractors to train their own employees and enforce this via contract provisions	Add a statement at V.D.8.k.i. that: “Each Permittee shall ensure contractors performing privatized/contracted municipal services are trained on the

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				similar to the provision under the Illicit Discharge section at VI.D.9.f.ii.	<p>requirements of the stormwater management program. Permittees may provide training or include contractual requirements for MS4 Permit training of contractor employees.”</p> <p>Add a statement at V.D.8.k.ii. that:</p> <p>“Each Permittee shall ensure contractors performing privatized/contracted municipal services who use or have the potential to use pesticides or fertilizers are trained on the requirements of the stormwater management program. Permittees may provide training or include contractual requirements for MS4 Permit training of contractor employees.”</p>
C	59	Table F-5		Timeline for Implementation of Permit Requirements is a helpful synopsis of all the deadlines in the permit. This table should be incorporated into the body of the permit rather than in the Fact Sheet as a helpful reference for permittees.	Move Table F-5 into main body of permit as it is a vital reference for implementation of permit requirements. Make sure that timelines in Table F-5 are consistent with statements made in the permit.
C	60	VI.E.5.b.(c)	118	Why was Santa Monica Bay left out of this list of waterbodies for which Permittees may comply with the effluent limitations through progressive installation of full capture systems? The Marine Debris TMDL allows for compliance via the installation of for full capture	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				devices.	However if Board staff determines to leave the lists, then please add Santa Monica Bay to the list.
C	61	VI.E.5.b.ii.(2)	121	Here and throughout full capture systems are designed to address a percentage of the MS4 conveyance system, not a drainage area.	Here and throughout substitute "MS4 conveyance system" for "drainage area" when discussing compliance with a trash TMDL via the full capture system method
C	62	VI.E.c.i.	122	Date for the first TMDL Compliance Report to be submitted with the Permittee's Annual Report is incorrect as it is prior to the projected effective date of this draft tentative permit. The Annual Reports to be submitted by Permittees in October 2012 will be consistent with the existing MS4 Permit not the draft permit.	Correct the date for submitting the first TMDL Compliance Report with the Permittee's Annual Report to be October 31, 2013, not 2012.
C	63	Attachment A	A-5	Definition of "infiltration" is not a description of the process of infiltration but rather a description of best management practices that utilize the infiltration process. The term "infiltration" must be distinguished from "infiltration BMP" .	<i>Infiltration</i> definition should be revised to be entitled <i>Infiltration BMP</i> .
C	64	Attachment B figures		It is problematic that the Watershed Boundaries do not align with the HUC 12 Boundaries in many areas.	Appears that the HUC 12 boundaries need to be revised, or else reference to the HUC 12 boundaries should be eliminated in favor of watershed boundaries.
C	65	Attachment M B.3	M-6 to M-7	The WLAs in the adopted Santa Monica Bay Nearshore and Offshore Debris TMDL were expressed in terms of percent reduction of trash from Baseline WLA. Board staff have not transferred the Waste Load Allocations as expressed in the TMDL into the MS4 Permit, but have instead calculated annual trash discharge rates for each permittee based on a calculation using an	Eliminate the detailed permittee-by-permittee table with annual trash discharge rates in the table and instead create a simple table listing the interim and final waste load allocations on a percentage basis, only.

Rank	Comment No.	Permit section reference	Pages	Comment	Recommended change
				<p>assumed tributary area. There are very likely to be errors in the tributary areas used in calculating these Waste Load Allocations and correcting them will necessitate reopening the Permit. It makes far more sense for MS4 Permittees to verify and if necessary correct the tributary areas for their individual jurisdictions as part of the development of the Trash Monitoring and Reporting Plans and to simply include in the permit the schedule for percentage reduction from baseline applicable to all permittees.</p>	



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Arturo Cervantes, P.E.
Director of Public Works/City Engineer

July 19, 2012

Mr. Ivar Ridgeway
Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Pico Rivera is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Cervantes", with a long horizontal flourish extending to the right.

Arturo Cervantes, P.E.
Director of Public Works/City Engineer

AC:lg

Attachments

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will

generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*. The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA

pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only “to” the MS4 makes this issue academic. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. **The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.**
 - a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According to USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

SUSMP needs to be replaced. So doing would incur an unnecessary cost to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further,

many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.
Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect its updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of date and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through

¹⁰Op. Cit., page 35.

the MS4 permit unless the Board includes into its basin plan as an amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. RECEIVING WATER MONITORING

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. STORMWATER OUTFALL BASED MONITORING

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should be not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. NON-STORM WATER OUTFALL BASED MONITORING

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*
- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. NEW DEVELOPMENT/RE-DEVELOPMENT EFFECTIVENESS MONITORING

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there

is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

July 23, 2012

Mr. Ivar Ridgeway
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

SUBJECT: Comments to the Draft National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Los Angeles County Flood Control District, Including Unincorporated Areas of Los Angeles County, and the Incorporated Cities Therein, Except the City of Long Beach (Los Angeles County MS4 Permit) (NPDES Permit NO. CAS004001) for the City of Pomona

Dear Mr. Ridgeway:

The City of Pomona respectfully submits the following comments regarding the Los Angeles Regional Water Quality Control Board (“Regional Water Board”) Tentative Draft NPDES Permit Order No. CAS004001 (“Permit”) for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) which was released for public comment by the Regional Water Board on June 6, 2012. City staff looks forward to working with you and Regional Water Board Staff in the development of the 4th Term Los Angeles County MS4 Permit.

In going forward, the City of Pomona will address in detail the following items:

- I. Time Extension
- II. Facility Information
- III. Non Stormwater Discharge Prohibitions
- IV. Total Maximum Daily Loads (TMDL’s)
- V. Middle Santa Ana River TMDL
- VI. Unfunded Mandates
- VII. Watershed Management Programs
- VIII. Stormwater Management Programs Minimum Control Measures
- IX. Development Construction Program
- X. Economic Consideration

Thus far, the LA Permit Group and other agencies have actively participated in its development efforts and have submitted extensive comments on outstanding technical and legal concerns on the Working Proposals, and provided testimony at staff level and board level workshops. The “Regional Board Workshops” seemed to benefit the Regional Board staff by giving the appearance of an interactive permit development process; however, the Agendas were packed with other “Board” business and ran late. One Workshop did not begin until almost 4:00 pm (almost 3 hours late) and the majority of the Permittees had to leave because of transit schedules. Those who stayed were surprised when the Workshop ended because Board Members had to leave. These were not Workshops. Workshops are designed to discuss the topic and deliberate all points until resolved. The Workshops that were held were “Board Meetings” and an opportunity for Board Staff to give the impression of collaboration on the Permit process. At each meeting, the Permittees were limited in time to address issues since Board Staff indicated there were time constraints. The most recent Staff Workshop provided approximately 30 minutes to discuss each of the chapters in a 500 page technical document. The structure of the Workshops did not invite collaboration or extensive comments – since the time constraint issue was designed into the meeting itself.

A lot has been accomplished so far and we appreciate the efforts of your staff. However, there are still key issues that have far-reaching economic, technical, and legal implications for Permittees that remain unresolved. While not all-inclusive due to the review period time constraints, the City of Pomona has outlined the following issues that need to be resolved and considered.

I. Time Extension

The City of Pomona believes an extension of time to review the 500 page Draft Permit is in everyone’s best interest to keep the permitting process as open and transparent as possible. The City is committed to the process of cooperatively developing the next 4th generation Permit, and has made every effort to stay engaged with Regional Board Staff and other Agencies in the Permit development.

The Draft Permit has gone through major changes and contains numerous errors and inconsistencies, and the short 45-day comment period does not allow staff or the City Attorney adequate time to review and provide comments. Most importantly, Stormwater Managers have an obligation to adequately inform other municipal departments, City Manager, and elected officials on the fiscal impact of this draft order. The time to properly evaluate the Permit, assess its financial, legal and personnel impacts cannot be accomplished in the 45-day review period. Therefore, the City of Pomona respectfully requests, again, that the comment period be extended by one-hundred and eighty (180) working days for Permittees to fully review and comprehend the Draft Permit, work with Regional Board Staff to clarify and improve upon the Draft Permit, prepare written comments on un-resolved issues, and avoid the need for litigation. It is imperative that Municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this draft order. This could be accomplished by an additional review of a tentative order before an adoption hearing is held.

II. Facility Information

Please correct the City of Pomona contact information on Page 6 to read as follows: Julie Carver, Environmental Programs Coordinator, Julie_Carver@ci.pomona.ca.us

III. Non Stormwater Discharge Prohibitions

The tentative order mentions prohibiting non-stormwater discharges not only “to the MS4” but “from and through it” as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to the MS4.” This is a serious issue because extending the prohibition “from or through” the MS4 would subject non-stormwater discharges (including dry weather Total Maximum Daily Load Wasteload Allocations and non-stormwater municipal action levels) to pollutant limitations at the outfall.

All MS4 Permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. With the exception of Los Angeles Regional Board MS4 Permits, MS4 Permits issued by other Regional Boards also limit the MS4 discharge prohibition “to the MS4.” Beyond this, the draft Caltrans MS4 Permit and draft Phase II MS4 Permit also limit the non-stormwater prohibition “to the MS4.” The City of Pomona recommends revising the non-stormwater discharge prohibition to be limited “to the MS4 only” and delete all requirements that are based on the prohibition “from or through the MS4.” This includes the non-stormwater prohibition that is linked to CERCLA.

IV. Total Maximum Daily Load

Of critical importance to this Permit and to water quality in the Los Angeles Region is the incorporation of Total Maximum Daily Load (TMDLs) into the NPDES Permit. The Draft Permit proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the Permittees and will likely set a significant precedent for future MS4 Permits.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board Staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL Waste Load Allocations (WLA), and we need the same flexibility to address Regional Board adopted TMDLs.

The City is in support of the LA Permit Group’s comments on the TMDLs and recommends that the Regional Water Board:

- Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective. Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- Translate WLAs into Water Quality Based Effluent Limits (WQBELs), expressed as Best Management Practices (BMPs).
- State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.
- Provide for four (4) compliance options for both interim and final WLAs:
 - Implement Actions/BMPs consistent with Watershed Management Program
 - Compliance at the outfall (end of pipe)
 - Compliance in the receiving water (river, creek, ocean)
 - No direct discharges
- Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.

V. Middle Santa Ana River TMDL

The Middle Santa Ana River Bacteria TMDL is outlined in the Santa Ana Regional Board NPDES Permit Order No. CAS618036 to San Bernardino County Flood Control District (Principal Permittee). The City of Pomona is not covered by this NPDES Permit.

To focus TMDL implementation efforts the Middle Santa Ana River (MSAR) Watershed TMDL Task Force was established, and it is administered by Santa Ana Watershed Project Authority (SAWPA). The City joined the MSAR Task Force and meets regularly to coordinate water quality management activities, and discuss in a forum the most cost effective and efficient strategy to address the Bacterial Indicator TMDL Mandate. City staff also attends the Comprehensive Bacteria Reduction Plan (CBRP) working group on identifying if urban runoff is the source of pollutant.

The City of Pomona would request from the Regional Water Board to acknowledge the City's efforts and support the continuation of working collaboratively with the MSAR Task Force and the San Bernardino County Stormwater Program's CBRP Working Group to achieve compliance with the MSAR Watershed Bacteria Indicator TMDL. The San Bernardino County Stormwater Program has developed a CBRP, and the City requests to use their CBRP and reporting requirements to be in compliance with the MSAR TMDL.

VI. Unfunded Mandates

The City respectfully disagrees with the Regional Board's position regarding unfunded mandates. We believe that a number of the new and enhanced provisions in the Permit constitute unfunded mandates as defined in Article XIII B, Section 6 (a) of the California Constitution.

In May 2010, the Commission on State Mandates (Commission) found that certain provisions within Los Angeles Municipal Storm Water Permit Order No. Order 01-182 constituted reimbursable state mandates within the meaning of the California Constitution Article XIII B, Section 6 (a). The test claims filed in 2003 and 2007 asserted that provisions of Los Angeles Water Board Order 01-182 constitute reimbursable State mandates. Part 3.F.5(c) required the Los Angeles claimants to install and maintain trash receptacles at specified transit stops. On September 3, 2009, the Commission issued a final decision entitled “In re Test Claim On: Los Angeles Regional Quality Control Board Order No. 01-182, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (Los Angeles Decision). The Los Angeles Decision approved the test claims”. The Commission found the trash receptacle requirement to be a reimbursable State mandate.

The Draft Permit states in Part II.Q and in Attachment F.XV. that “this Permit does not constitute a new or a high level of service as compared to the requirements contained in the previous Permit.” The City of Pomona disagrees. As one example, we believe the requirement to install trash excluders or equivalent devices in areas not subject to a trash TMDL, constitutes an unfunded mandate.

The Board states “if any of the provisions could be considered unfunded mandates, under Government Code Section 17556, subdivision (d), a State mandate is not subject to reimbursement if the local agency has the authority to charge a fee.” The City is not able to charge a fee for the installation of trash excluders on “Priority A” catch basins, monies will be taken directly out of the City’s General Fund. The City has a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. New general fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote; so, this is an item that is not under direct control of the municipalities. The decision to raise the fees rests in the hand of the voters and the Permit language should reflect this. The Board’s assertion that local agencies have been granted fee authority through the Los Angeles County Flood Control District’s Funding Initiative is premature at best, because the initiative has not yet been placed on the ballot nor approved by a majority vote.

VII. Watershed Management Programs

The City of Pomona supports the Regional Board’s approach to address high priority water quality issues through the development and implementation of Watershed Management Programs. However, we have concerns with the language contained in Part VI.C of the Permit. One of our biggest concerns is the proposed timeline for developing Watershed Management Programs. Agencies wishing to participate in Watershed Management Programs would have only one (1) year to develop a comprehensive Watershed Management Program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary City Council approvals.

We are concerned that Part VI.C. of the Permit does not provide Cities wishing to participate in a Watershed Management Program the option of developing their own programs, outside of the

Watershed Management Program, to remain consistent with the requirements of the Permit. For example, a watershed group may develop a Watershed Management Program for TMDL and monitoring purposes, and choose to implement the Minimum Control Measures as currently prescribed by the Permit. This may not be appropriate for all Cities participating in the Watershed Management Program. Individual Cities, when participating in a Watershed Management Program, should be able to choose which elements of the Program they will participate in, and which elements they will opt out of, preferring to implement the programs as prescribed by the Permit.

The City, therefore requests that the Permit include clarifying language, providing the City with the necessary flexibility to participate in a Watershed Management Program for the selected program elements within the Permit. Alternatively, staff would suggest a phased approach where some initial efforts (e.g. MOUs, funding mechanism, retrofit inventory) could be completed and submitted within 12 months, but allow at least a 24 month timeline for the more complicated or resource intensive efforts.

VIII. Storm Water Management Program Minimum Control Measures

The City is concerned that the timelines for implementation of the Minimum Control Measures (MCMs) will not provide an adequate timeframe in which to implement the new and enhanced Permit conditions. Specifically, Permit Part D.1.b. (i) states: “unless otherwise noted in Part VI.D., each Permittee shall ensure implementation of the requirements contained in Part VI.D. within thirty (30) days after the effective date of the Order.” Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position², that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. Also for clarification it would be constructive to state or define the terms of adaptive management approach and the iterative approach as equivalent and that the terms can be used interchangeably.

The City respectfully requests that the timelines for implementation of the MCMs be extended to one-hundred and eighty (180) days after the effective date of the Order, to allow Permittees the necessary time to develop new programs/plans, and enhance existing programs as prescribed in the Permit.

The next issue as stated in the Unfunded Mandate comment above refers to Provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. The City takes exception to this approach, as on the one hand the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

makes little sense and the City would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL). If the City has to install trash excluders on all Priority “A” catch basins, this would cause undue hardship to our General Fund in excess of \$2 Million dollars plus in the first two years after adoption. For the City to fund this requirement, the City would have to look at additional staff lay-offs, elimination of other programs, and other extreme measures.

The third issue pertains to Provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the City develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing areas of development, and furthermore in Provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these Provisions in whole would seem to indicate that the City must identify all potential retrofit sites (private or publicly owned), and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater Regulations (40 CFR 122.26.(d)(2)(iv)(4) require consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. The City recommends that for this Permit term, that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.

IX. Development Construction Program

The Draft Permit will require projects of one (1) acre or greater to prepare an Erosion and Sediment Control Plan (ESCP). It is our understanding that the ESCP must include the same elements of a Stormwater Pollution Prevention Plan (SWPPP). This Permit requirement essentially places the burden of enforcement of the State Construction General Permit on the municipal Permittees.

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Summary

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Draft Tentative NPDES Permit for MS4s – City of Pomona

July 23, 2012

Page 9 of 9

We look forward to continued collaboration with your staff to develop a Permit that improves water quality and maximizes the effectiveness of available resources. Please feel free to contact Julie Carver, Environmental Programs Coordinator at (909) 620-3628 if you have any questions regarding the City of Pomona's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliott Rothman". The signature is written in a cursive style with a long horizontal line extending to the right.

Elliott Rothman, Mayor
City of Pomona

OFFICE OF THE MAYOR

ELLIOTT ROTHMAN
Mayor

July 23, 2012



Mr. Ivar Ridgeway
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(Electronically to LAMS42012@waterboards.ca.gov)

SUBJECT: Comments to the Draft National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Los Angeles County Flood Control District, Including Unincorporated Areas of Los Angeles County, and the Incorporated Cities Therein, Except the City of Long Beach (Los Angeles County MS4 Permit) (NPDES Permit NO. CAS004001) for the City of Pomona

Dear Mr. Ridgeway:

The City of Pomona respectfully submits the following comments regarding the Los Angeles Regional Water Quality Control Board ("Regional Water Board") Tentative Draft NPDES Permit Order No. CAS004001 ("Permit") for Stormwater Discharges from the Municipal Separate Storm Sewer System (MS4) which was released for public comment by the Regional Water Board on June 6, 2012. City staff looks forward to working with you and Regional Water Board Staff in the development of the 4th Term Los Angeles County MS4 Permit.

In going forward, the City of Pomona will address in detail the following items:

- I. Time Extension
- II. Facility Information
- III. Non Stormwater Discharge Prohibitions
- IV. Total Maximum Daily Loads (TMDL's)
- V. Middle Santa Ana River TMDL
- VI. Unfunded Mandates
- VII. Watershed Management Programs
- VIII. Stormwater Management Programs Minimum Control Measures
- IX. Development Construction Program
- X. Economic Consideration

Thus far, the LA Permit Group and other agencies have actively participated in its development efforts and have submitted extensive comments on outstanding technical and legal concerns on the Working Proposals, and provided testimony at staff level and board level workshops. The “Regional Board Workshops” seemed to benefit the Regional Board staff by giving the appearance of an interactive permit development process; however, the Agendas were packed with other “Board” business and ran late. One Workshop did not begin until almost 4:00 pm (almost 3 hours late) and the majority of the Permittees had to leave because of transit schedules. Those who stayed were surprised when the Workshop ended because Board Members had to leave. These were not Workshops. Workshops are designed to discuss the topic and deliberate all points until resolved. The Workshops that were held were “Board Meetings” and an opportunity for Board Staff to give the impression of collaboration on the Permit process. At each meeting, the Permittees were limited in time to address issues since Board Staff indicated there were time constraints. The most recent Staff Workshop provided approximately 30 minutes to discuss each of the chapters in a 500 page technical document. The structure of the Workshops did not invite collaboration or extensive comments – since the time constraint issue was designed into the meeting itself.

A lot has been accomplished so far and we appreciate the efforts of your staff. However, there are still key issues that have far-reaching economic, technical, and legal implications for Permittees that remain unresolved. While not all-inclusive due to the review period time constraints, the City of Pomona has outlined the following issues that need to be resolved and considered.

I. Time Extension

The City of Pomona believes an extension of time to review the 500 page Draft Permit is in everyone’s best interest to keep the permitting process as open and transparent as possible. The City is committed to the process of cooperatively developing the next 4th generation Permit, and has made every effort to stay engaged with Regional Board Staff and other Agencies in the Permit development.

The Draft Permit has gone through major changes and contains numerous errors and inconsistencies, and the short 45-day comment period does not allow staff or the City Attorney adequate time to review and provide comments. Most importantly, Stormwater Managers have an obligation to adequately inform other municipal departments, City Manager, and elected officials on the fiscal impact of this draft order. The time to properly evaluate the Permit, assess its financial, legal and personnel impacts cannot be accomplished in the 45-day review period. Therefore, the City of Pomona respectfully requests, again, that the comment period be extended by one-hundred and eighty (180) working days for Permittees to fully review and comprehend the Draft Permit, work with Regional Board Staff to clarify and improve upon the Draft Permit, prepare written comments on un-resolved issues, and avoid the need for litigation. It is imperative that Municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this draft order. This could be accomplished by an additional review of a tentative order before an adoption hearing is held.

II. Facility Information

Please correct the City of Pomona contact information on Page 6 to read as follows: Julie Carver, Environmental Programs Coordinator, Julie_Carver@ci.pomona.ca.us

III. Non Stormwater Discharge Prohibitions

The tentative order mentions prohibiting non-stormwater discharges not only “to the MS4” but “from and through it” as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to the MS4.” This is a serious issue because extending the prohibition “from or through” the MS4 would subject non-stormwater discharges (including dry weather Total Maximum Daily Load Wasteload Allocations and non-stormwater municipal action levels) to pollutant limitations at the outfall.

All MS4 Permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. With the exception of Los Angeles Regional Board MS4 Permits, MS4 Permits issued by other Regional Boards also limit the MS4 discharge prohibition “to the MS4.” Beyond this, the draft Caltrans MS4 Permit and draft Phase II MS4 Permit also limit the non-stormwater prohibition “to the MS4.” The City of Pomona recommends revising the non-stormwater discharge prohibition to be limited “to the MS4 only” and delete all requirements that are based on the prohibition “from or through the MS4.” This includes the non-stormwater prohibition that is linked to CERCLA.

IV. Total Maximum Daily Load

Of critical importance to this Permit and to water quality in the Los Angeles Region is the incorporation of Total Maximum Daily Load (TMDLs) into the NPDES Permit. The Draft Permit proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the Permittees and will likely set a significant precedent for future MS4 Permits.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board Staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL Waste Load Allocations (WLA), and we need the same flexibility to address Regional Board adopted TMDLs.

The City is in support of the LA Permit Group’s comments on the TMDLs and recommends that the Regional Water Board:

- Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective. Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- Translate WLAs into Water Quality Based Effluent Limits (WQBELs), expressed as Best Management Practices (BMPs).
- State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.
- Provide for four (4) compliance options for both interim and final WLAs:
 - Implement Actions/BMPs consistent with Watershed Management Program
 - Compliance at the outfall (end of pipe)
 - Compliance in the receiving water (river, creek, ocean)
 - No direct discharges
- Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.

V. Middle Santa Ana River TMDL

The Middle Santa Ana River Bacteria TMDL is outlined in the Santa Ana Regional Board NPDES Permit Order No. CAS618036 to San Bernardino County Flood Control District (Principal Permittee). The City of Pomona is not covered by this NPDES Permit.

To focus TMDL implementation efforts the Middle Santa Ana River (MSAR) Watershed TMDL Task Force was established, and it is administered by Santa Ana Watershed Project Authority (SAWPA). The City joined the MSAR Task Force and meets regularly to coordinate water quality management activities, and discuss in a forum the most cost effective and efficient strategy to address the Bacterial Indicator TMDL Mandate. City staff also attends the Comprehensive Bacteria Reduction Plan (CBRP) working group on identifying if urban runoff is the source of pollutant.

The City of Pomona would request from the Regional Water Board to acknowledge the City's efforts and support the continuation of working collaboratively with the MSAR Task Force and the San Bernardino County Stormwater Program's CBRP Working Group to achieve compliance with the MSAR Watershed Bacteria Indicator TMDL. The San Bernardino County Stormwater Program has developed a CBRP, and the City requests to use their CBRP and reporting requirements to be in compliance with the MSAR TMDL.

VI. Unfunded Mandates

The City respectfully disagrees with the Regional Board's position regarding unfunded mandates. We believe that a number of the new and enhanced provisions in the Permit constitute unfunded mandates as defined in Article XIII B, Section 6 (a) of the California Constitution.

In May 2010, the Commission on State Mandates (Commission) found that certain provisions within Los Angeles Municipal Storm Water Permit Order No. Order 01-182 constituted reimbursable state mandates within the meaning of the California Constitution Article XIII B, Section 6 (a). The test claims filed in 2003 and 2007 asserted that provisions of Los Angeles Water Board Order 01-182 constitute reimbursable State mandates. Part 3.F.5(c) required the Los Angeles claimants to install and maintain trash receptacles at specified transit stops. On September 3, 2009, the Commission issued a final decision entitled “In re Test Claim On: Los Angeles Regional Quality Control Board Order No. 01-182, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (Los Angeles Decision). The Los Angeles Decision approved the test claims”. The Commission found the trash receptacle requirement to be a reimbursable State mandate.

The Draft Permit states in Part II.Q and in Attachment F.XV. that “this Permit does not constitute a new or a high level of service as compared to the requirements contained in the previous Permit.” The City of Pomona disagrees. As one example, we believe the requirement to install trash excluders or equivalent devices in areas not subject to a trash TMDL, constitutes an unfunded mandate.

The Board states “if any of the provisions could be considered unfunded mandates, under Government Code Section 17556, subdivision (d), a State mandate is not subject to reimbursement if the local agency has the authority to charge a fee.” The City is not able to charge a fee for the installation of trash excluders on “Priority A” catch basins, monies will be taken directly out of the City’s General Fund. The City has a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. New general fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote; so, this is an item that is not under direct control of the municipalities. The decision to raise the fees rests in the hand of the voters and the Permit language should reflect this. The Board’s assertion that local agencies have been granted fee authority through the Los Angeles County Flood Control District’s Funding Initiative is premature at best, because the initiative has not yet been placed on the ballot nor approved by a majority vote.

VII. Watershed Management Programs

The City of Pomona supports the Regional Board’s approach to address high priority water quality issues through the development and implementation of Watershed Management Programs. However, we have concerns with the language contained in Part VI.C of the Permit. One of our biggest concerns is the proposed timeline for developing Watershed Management Programs. Agencies wishing to participate in Watershed Management Programs would have only one (1) year to develop a comprehensive Watershed Management Program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary City Council approvals.

We are concerned that Part VI.C. of the Permit does not provide Cities wishing to participate in a Watershed Management Program the option of developing their own programs, outside of the

Watershed Management Program, to remain consistent with the requirements of the Permit. For example, a watershed group may develop a Watershed Management Program for TMDL and monitoring purposes, and choose to implement the Minimum Control Measures as currently prescribed by the Permit. This may not be appropriate for all Cities participating in the Watershed Management Program. Individual Cities, when participating in a Watershed Management Program, should be able to choose which elements of the Program they will participate in, and which elements they will opt out of, preferring to implement the programs as prescribed by the Permit.

The City, therefore requests that the Permit include clarifying language, providing the City with the necessary flexibility to participate in a Watershed Management Program for the selected program elements within the Permit. Alternatively, staff would suggest a phased approach where some initial efforts (e.g. MOUs, funding mechanism, retrofit inventory) could be completed and submitted within 12 months, but allow at least a 24 month timeline for the more complicated or resource intensive efforts.

VIII. Storm Water Management Program Minimum Control Measures

The City is concerned that the timelines for implementation of the Minimum Control Measures (MCMs) will not provide an adequate timeframe in which to implement the new and enhanced Permit conditions. Specifically, Permit Part D.1.b. (i) states: “unless otherwise noted in Part VI.D., each Permittee shall ensure implementation of the requirements contained in Part VI.D. within thirty (30) days after the effective date of the Order.” Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position², that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. Also for clarification it would be constructive to state or define the terms of adaptive management approach and the iterative approach as equivalent and that the terms can be used interchangeably.

The City respectfully requests that the timelines for implementation of the MCMs be extended to one-hundred and eighty (180) days after the effective date of the Order, to allow Permittees the necessary time to develop new programs/plans, and enhance existing programs as prescribed in the Permit.

The next issue as stated in the Unfunded Mandate comment above refers to Provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. The City takes exception to this approach, as on the one hand the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

makes little sense and the City would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL). If the City has to install trash excluders on all Priority “A” catch basins, this would cause undue hardship to our General Fund in excess of \$2 Million dollars plus in the first two years after adoption. For the City to fund this requirement, the City would have to look at additional staff lay-offs, elimination of other programs, and other extreme measures.

The third issue pertains to Provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the City develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing areas of development, and furthermore in Provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these Provisions in whole would seem to indicate that the City must identify all potential retrofit sites (private or publicly owned), and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater Regulations (40 CFR 122.26.(d)(2)(iv)(4) require consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. The City recommends that for this Permit term, that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.

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Draft Tentative NPDES Permit for MS4s – City of Pomona
July 23, 2012
Page 9 of 9

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Elliott Rothman, Mayor
City of Pomona



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July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
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rpurdy@waterboards.ca.gov
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Re: **Comment Letter on behalf of the City of Rancho Palos Verdes on Draft MS4 Stormwater NPDES Permit for LA County**

Dear Ms. Ridgeway:

The City of Rancho Palos Verdes (“City”) submits the following comments to the Los Angeles Regional Water Quality Control Board’s (“Regional Board”) Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001 (“Permit”). The City of Rancho Palos Verdes has joined with other cities in the Palos Verdes Peninsula (“Peninsula cities”) to submit a variety of technical comments that were previously sent to your attention. In addition, the City notes that the LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Rancho Palos Verdes, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a

Mr. Ivar Ridgeway
July 23, 2012
Page 2

justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

With due respect, the City urges the Board to reconsider its position based upon several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day

Mr. Ivar Ridgeway
July 23, 2012
Page 3

comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge "causes or contributes" to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See Fact Sheet at pp. F-35-38.* These positions are incompatible and effectively render the iterative approach meaningless.

Mr. Ivar Ridgeway
July 23, 2012
Page 4

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit's current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." ("EPA Memorandum"). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Malibu, City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerical values should be coupled with the "disaggregation" of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

Mr. Ivar Ridgeway
July 23, 2012
Page 5

3. The Permit Improperly Intrudes Upon the City’s Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Neither the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has **removed** the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B). As to the Clean Water Act, there is certainly no express pre-emption in any statutory language, nor is there any pre-emption based upon the City ordinances constituting some type of “obstacle” or “impossibility” to the implementation of the federal law.

If the Permit is adopted, the City believes that this Permit could effectively establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with

Mr. Ivar Ridgeway
July 23, 2012
Page 6

implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the "Maximum Extent Practicable" ("MEP") standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

Mr. Ivar Ridgeway
July 23, 2012
Page 7

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.*, Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State

Mr. Ivar Ridgeway
July 23, 2012
Page 8

and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

Mr. Ivar Ridgeway
July 23, 2012
Page 9

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee's discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

Mr. Ivar Ridgeway
July 23, 2012
Page 10

6. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter into Contracts and Coordinate With Other Co-permittees

The Regional Board cannot require the City to enter into agreements or coordinate with other co-permittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other co-permittees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include "[e]conomic considerations" with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

Mr. Ivar Ridgeway
July 23, 2012
Page 11

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. *See* Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for

Mr. Ivar Ridgeway
July 23, 2012
Page 12

TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to “the person making or proposing the discharge.” Cal. Water Code § 13263(f). Enforcement is directed towards “any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement.” Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the “person” who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to “commingled discharges” of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee’s discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee’s actions. *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees’ dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

Mr. Ivar Ridgeway
July 23, 2012
Page 13

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman A. Dupont", with a large, sweeping flourish extending to the right.

Norman A. Dupont

cc: Jim Hendrickson, Interim Director Public Works
Andy Winje, Public Works
Ron Drago, Senior Engineer
Carol Lynch



City of Rolling Hills

INCORPORATED JANUARY 24, 1957

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ROLLING HILLS, CA 90274
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JAMES BLACK, M.D.
Mayor

FRANK E. HILL
Mayor Pro Tem

THOMAS F. HEINSHEIMER
Councilmember

B. ALLEN LAY
Councilmember

GODFREY PERNELL, D.D.S.
Councilmember

July 19, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Draft NPDES Permit for LA County MS4 Discharges

Dear Honorable Chairperson Mehranian and Members of the Los Angeles Regional Water Quality Control Board:

Supplemental to the detailed comments sent to you by the Peninsula Cities with regard to the Draft NPDES Permit for MS4 Discharges, I am writing, on behalf of the Rolling Hills City Council, to voice alarm, frustration and disappointment in the Draft NPDES Permit regulations. As a policy document, and as goals for achieving cleaner water; the draft permit, as the new means of achieving clean storm water, is flawed. Besides the inconsistencies and errors in the draft permit itself (which have been highlighted in letters from the Peninsula Cities' and the L.A. Permit Group), and only 45 days to review and comment on the very complex 500 page document, there appears to be no consideration or recognition of the significant cost impacts to cities or how the reporting and infinite monitoring achieves the goals of the Clean Water Act in a prioritized manner. The permit does not acknowledge the lack of funding sources and staff resources necessary to locally implement the permit, the practicality of implementing the regulations, the unique and environmental character of individual cities, or how the substantial amount of reporting and monitoring will achieve the desired improvements to water quality. Moreover, in how the permit is structured for implementation, it results in a new industry and bureaucracy, with the main beneficiary being consultants.

More specifically, the Draft NPDES Permit creates an oppressive cost for cities. Rolling Hills, for example, has only a \$1.5 million annual budget. In this current economic

environment, Rolling Hills and other communities lack the staff and resources to meet the extensive draft permit obligations while currently maintaining basic community needs. In the end, not only will the permit as drafted require an enormous amount of paperwork, staff time and financial resources, it is not clear that all of these new mandates will achieve cleaner storm water. What is clear is that these mandates will require allocation of limited funds away from basic community needs. Moreover, the timelines to develop new watershed management and monitoring programs within the permit requirements are far too short. It takes considerable time to prepare action plans, hire consultants, enter into MOAs with other agencies in the watershed, and secure funding. The timelines in the permit are inadequate.

As previously communicated, the City of Rolling Hills in significant and numerous ways is very unique. The City is, by design of its founders and the General Plan, a low density, low impact, rural, gated *residential* community. In its approximately 3 square miles consisting of numerous steep canyons where primary drainage is conveyed via natural canyons, the City is surrounded 360-degrees by other municipalities. With a population of approximately 1,800 and 684 single-family homes, Rolling Hills has *no multi-family, industrial or commercial land uses of any type within the City*. Residential lots range in size from a minimum of one-acre to as much as 17-acres and, most all the land is pervious allowing for the natural infiltration of water. Roads are private, i.e., not public right-of-way and, they are not equipped with curb-and-gutter; therefore, they do not convey trash or pollutants. Dry weather flows and significant rainfall events are infiltrated within the natural, largely undisturbed and vegetated soft-bottom canyons that are the primary drainage system; there is no continuous improved storm drain system throughout the City. Source control is the primary means available to the City for maintaining and improving water quality since structural control/treatment devices/infiltration are not technically feasible or environmentally appropriate in steep, natural canyons. Thus, Rolling Hills needs flexibility to create cost-effective, storm water management policies that work for this unique community.

The City Council is on record supporting the environmental goal(s) of clean water and, is committed to a solution that results in clean water. However, the process for adopting the proposed Draft NPDES Permit for MS4 Discharges has not been conducive to partnering in a solution, nor do the provisions help solve the problem. The Little Hoover Commission in its report "Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Board (January 2009)" makes very reasonable recommendations for improving an antiquated system for addressing storm water. Similarly, its October 2011 report "Better Regulation: Improving California's Rulemaking Process" recommends that cost effectiveness be considered in the promulgation of regulations. It is not clear that cost has been considered at all in this

Mehranian

July 19, 2012

Re: Draft NPDES Permit for LA County MS4 Discharges

Page 3 of 3

process, and these are all recommendations that should be taken into consideration in development of the Final NPDES Permit for MS4 Discharges.

I strongly urge you to revise the Final NPDES Permit for MS4 Discharges to provide local governments with the flexibility to determine how best to meet the State's water quality objectives as opposed to a 'one-size-fits-all' approach that fails to acknowledge the unique characteristics and environment of cities. We request that requirements in the permit be made to expire if the City demonstrates compliance and achievement of the policy goals and the permit include provisions that focus on cleaning storm water rather than indefinitely monitoring and reporting. In conclusion, the City is strongly opposed to the proposed draft permit and requests a renewed effort to develop a new, more constructive, cost-effective storm water program.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read 'James Black' followed by a flourish.

James Black, M.D.
Mayor

JB:hl

07-19-12NPDESPermitMS4.docx

c: Rolling Hills City Council
California Regional Water Quality Control Board
Governor Jerry Brown
Congressman Henry Waxman
Assembly Member Bonnie Lowenthal
Senator Roderick Wright
Anton Dahlerbruch, City Manager
Michael Jenkins, City Attorney

I wanted to clarify my prior email regarding the parties that were submitting the Comments I forwarded to you earlier today. Please recognize that the prior Comments/Exhibits were submitted on behalf of the City of Signal Hill and all Cities/Agencies that may join in those comments.

If you have any questions, please feel free to contact me.

Thank you.

Patricia Johnson
Legal Secretary
Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
714-641-5100 x 1544
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 Please consider the environment before printing this e-mail.

From: Johnson, Patricia [mailto:PJohnson@rutan.com]

Sent: Monday, July 23, 2012 9:22 AM

To: rpurdy@waterboards.ca.gov; iridgeway@waterboards.ca.gov;
LAMS42012@waterboards.ca.gov

Cc: Montevideo, Richard; KFarfsing@cityofsignalhill.org

Subject: SH/SW: Comments on Tentative Los Angeles County Municipal Separate Storm Sewer System (SM4) Permit

Please see attached Comments on Draft MS4 NPDES Tentative Permit submitted on behalf of LA County & Cities Therein Except City of Long Beach by Rutan & Tucker, LLP, Richard Montevideo.

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July 20, 2012

VIA MESSENGER (WITH EXHIBITS)
and ELECTRONIC MAIL (WITHOUT EXHIBITS)

Ivar Ridgeway
California Regional Water Quality Control
Board, Los Angeles Region
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iridgeway@waterboards.ca.gov
rpurdy@waterboards.ca.gov
LAMS42012@waterboards.ca.gov

Re: Comments on Draft MS4 NPDES Permit For Los Angeles County and Cities
Therein Except the City of Long Beach; Request for Production of Documents at
Hearings; and Objections to Manner of Hearing

Dear Mr. Ridgeway:

This submittal is being made on behalf of the City of Signal Hill (with potentially other cities joining in all or portions of these Comments – Signal Hill and any joining cities are collectively referred to herein as the “Cities”). The Cities are submitting these comments in response to the June 6, 2012 Notice of Opportunity for Public Comment and Notice of Public Hearing on the draft National Pollutant Discharge Elimination System (“NPDES”) for Municipal Separate Storm Sewer System (MS4) Discharges within the County of Los Angeles, and the incorporated Cities therein, except the City of Long Beach (NPDES No. CAS004001 “Proposed Permit”), and the Draft Fact Sheet/Staff Report regarding such Permit. Because of the length of these comments a table of contents is included below, followed by the Comments themselves and an Exhibit List, with the Exhibits all included on compact discs.

TABLE OF CONTENTS

	<u>Page</u>
I. REQUEST FOR PRODUCTION OF DOCUMENTS AT TIME OF HEARING AND OBJECTIONS TO PROCEDURE AND MANNER OF HEARING.....	2
A. Request for All Applicable Evidence to be Physically Available at Hearing.....	2
B. It is Unlawful for the Same Attorney to be Advising both the Regional Board Staff and the Board Itself at this Adjudicative Hearing	3
II. BASED ON CONTROLLING LAW AND THE EVIDENCE, THE PROPOSED PERMIT CANNOT LAWFULLY BE ADOPTED AT THIS TIME.....	7
A. The Regional Board is Without Authority To Issue A System-Wide MS4 Permit or WDRs to Parties Who Filed Separate ROWD/Permit Applications and Who Have Not Agreed to be Included as Co-Permittees in a System-wide Permit	9
B. The Proposed Permit Terms Requiring A Permittee Involved In A Comingled Discharge To Prove It Did Not Cause Or Contribute To An Alleged Exceedance Violates Basic Tenants Of Due Process Of Law And Is Fundamentally Unenforceable	16
C. The Numerous Provisions In The Proposed Permit Requiring Compliance With Various Forms Of Numeric Effluent Limits, Either Through WQBELs Or Receiving Water Limits, Exceed The Clean Water Act’s Requirements For MS4 Permittees, And Otherwise Violate State Law And Policy	23
1. The Inclusion Of Numeric Limits In The Form Of Numeric WQBELs Or Receiving Water Limits, As A Matter Of Law, Go Beyond The MEP Standard And State Law and Policy	23
2. The Proposed Permit Requires The MS4 Permittees Comply With Numeric Limits	32
D. The Proposed Permit Should Be Revised To Be Consistent With The Maximum Extent Practicable Standard By Specifically Allowing For Deemed Compliance Through An Iterative / Adaptive Management Process	35

Ivar Ridgeway
 July 20, 2012
 Page ii

	<u>Page</u>
E. Requiring Strict Compliance With Numeric Limits In A Municipal NPDES Permit In Most Cases Is Requiring Compliance With Terms That Are Impossible To Achieve.....	42
F. The “Discharge Prohibition” Terms Of Part III.A Of The Proposed Permit, To The Extent They Attempt To Impose A Higher Standard Than The MEP Standard On The Permittees, Are Inconsistent With Federal Law And Contrary To State Law.....	46
1. The MEP Standard Applies To Discharges Of Both “Non-Stormwater” And “Stormwater” From The MS4	46
2. The Definition Of “Stormwater” Includes “Dry Weather” Runoff.....	51
G. The Proposed Permit Terms Requiring Compliance With Numeric Limits, Irrespective Of The MEP Standard, Along With The New “Discharge Prohibitions” Terms, Were Not Adopted In Accordance With The Requirements Of CWC §§ 13000, 13263 And 13241	57
H. The Proposed Permit Monitoring, And Reporting Program Requirements, And Related And Similar Terms Throughout The Proposed Permit Were Not Developed In Accordance With Law, As The Regional Board Has Failed To Comply With Water Code Sections 13267, 13225 and 13165.....	68
I. The California Environmental Quality Act (“CEQA”) Preempts The Planning And Land Development Program Requirements Set Forth In The Proposed Permit.....	70
J. Various Portion Of The Proposed Permit Impose Unfunded State Mandates Which Are Not Permitted Under The California Constitution Unless First Funded By The State	76
III. CONCLUSION.....	78

Ivar Ridgeway
July 20, 2012
Page 2

I. REQUEST FOR PRODUCTION OF DOCUMENTS AT TIME OF HEARING AND OBJECTIONS TO PROCEDURE AND MANNER OF HEARING

A. Request for All Applicable Evidence to be Physically Available at Hearing.

As reflected in the Notice of the Public Hearing, the Hearing is to be conducted as a “formal adjudicatory proceeding pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations.” (Hearing Notice, p. 3.) As such, the California Regional Water Quality Control Board, Los Angeles Regions (“Regional Board” or “Board”) will be presiding over a formal adjudicative proceeding wherein it is to evaluate all of the evidence presented at that time concerning the propriety of the proposed reissuance of the Proposed Permit, and only after considering all such evidence, and arguments, is the Board to make a determination on whether to issue the Proposed Permit, and the terms and findings to include therein. *As such, all documentation and other evidence to be presented in support of or in opposition to the reissuance of the Proposed Permit, or any part thereof, is hereby requested to be made available at the time of the hearing so that the Board, as the decision maker, may evaluate all of the evidence and make its decision based thereon.* It is legally inappropriate for the decision-maker to base its decision at a formal adjudicative hearing on evidence not presented to said decision-maker during the hearing process.

The Cities thus respectfully object to any attempt by Board Staff to limit the evidence that is made available to the Regional Board at the hearing, and object to any assertion that evidence that was not made available to the Board at the hearing is somehow to be a part of the

Ivar Ridgeway
July 20, 2012
Page 3

administrative record. Any material not available at the time of this “formal administrative hearing” cannot be subsequently included as a part of the administrative record.

Furthermore, the Cities specifically request that all documents and evidence that concern or in any way relate to any findings or Proposed Permit terms relating to any of the issues raised in these comments, be produced at the time of the adjudicative hearing and be available for review by respective witnesses, and for evaluation and consideration by the Board, before Permit reissuance. In short, the failure on the part of the Board staff to make this evidence and all other evidence available to the Board for consideration at the hearing would constitute a violation of due process of law.

B. It is Unlawful for the Same Attorney to be Advising both the Regional Board Staff and the Board Itself at this Adjudicative Hearing.

The Cities herein object to the assertions set forth in the Notice of Hearing, that the Los Angeles Water Board Staff is not a party to this proceeding, that the proceeding “does not involve investigative, prosecutorial or advocacy functions,” and, that “assigning a separate staff to advocate on behalf of a particular position would not further the development of the issues before the Los Angeles Water Board.” (Hearing Notice, p. 5.)

As the Regional Board and Board Staff are aware, Regional Board Order No. R4-2006-0074 involving the prior incorporation of the Santa Monica Bay Bacteria Total Maximum Daily Load (“SMB Bacteria TMDL”) into the 2001 MS4 Permit was voided and set aside by the Los Angeles Superior Court. (See Exhibit ”1,” which includes copies of the July 30, 2010

Ivar Ridgeway
July 20, 2012
Page 4

Peremptory Writ of Mandate and the July 16, 2010 Judgment.¹ As set forth in the Superior Court's Writ of Mandate dated July 23, 2010, Board Order No. 2006-0074 was found to be invalid specifically because during the prior adjudicative hearing on the incorporation of the SMB Bacteria TMDL into the Permit, the Regional Board's counsel advised both the Regional Board Staff and the Regional Board itself. (See Exhibit "1," Writ of Mandate, p. 2.)

Despite the recent adverse trial court decision on this precise issue, incredibly in the Notice of Hearing on the issuance of the Proposed Permit (a permit that is indisputably far more complex than was the previous permit modification to incorporate the SMB Bacteria TMDL), the Regional Staff claims that the adoption of this very far-reaching Proposed Permit only involves "limited facts in dispute," and thus that there is no need to assign "separate staff to 'advocate' on behalf of a particular position." (Notice of Hearing, p. 5.) Regional Board Staff then astonishingly claims that the "Los Angeles Water Board Staff *is not a party to this proceeding*" (*id.*), and makes this claim in spite of the fact that: "Staff's proposals, recommendations, and their participation in this proceeding exists *for the purpose of advising and assisting the Los Angeles Water Board*. Likewise, attorneys for the Los Angeles Water Board *will advise and assist the Los Angeles Water Board, which includes the board members and its entire staff.*" (*Id.*)

¹ All Exhibits referenced herein are enclosed on labeled compact discs.

Ivar Ridgeway
July 20, 2012
Page 5

Thus, on the one hand, although the Hearing Notice recognizes that the Regional Board Staff has made proposals, is making recommendations, and will be participating in a “formal adjudicative” proceeding to explain and support its proposals and recommendations, at the same time, Board Staff wrongly claims that “Los Angeles Water Board Staff is not a party to this proceeding” and thus that the same attorney may advise both Staff and the Board itself. (*Id.*) The Cities object to this characterization of Regional Board Staff as being a non-party, as it is obvious that Board Staff has drafted and is recommending, *i.e.*, advocating, the adoption of the Proposed Permit to the decision-maker. Board Staff has also prepared the Fact Sheet/Staff Report, a legally required document, and in addition will be responding to the publicly submitted comments and evidence. (*Id.* at p. 5.)

The use of the same attorney by both the decision-maker and Board Staff is a blatant violation of California Law, particularly given the recently issued writ of mandate against the Regional Board for doing the very same thing. According to the Writ of Mandate issued by the Los Angeles Superior Court overturning Regional Board Order No. R4-2006-0074, should the Regional Board “choose to conduct any further hearing upon remand at such hearing *the same person shall not act as both an advocate before the Los Angeles Regional Water Quality Control Board and an advisor to the Los Angeles Regional Water Quality Control Board . . .*” (Exhibit ”1,” Writ, p. 2.) The fact that the Regional Board is once again attempting to incorporate the SMB Bacteria TMDL into the Permit and in doing so, allowing the same counsel to advise both Board Staff and the Board, may very well subject the Board to being held in

Ivar Ridgeway
July 20, 2012
Page 6

contempt of Court, given the fact that the Writ of Mandate expressly forbids the Board from allowing the same counsel to advise both the Board and the Board Staff for the incorporation of the SMB Bacteria TMDL.

In *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, the Appellate Court found that Government Code sections 11425.10 and 11425.30 preclude a lawyer from both advocating on behalf of the staff of an administrative agency, and advising the decision-making body itself in the same administrative proceeding. There, the Court looked to the California Administrative Procedures Act (“APA”) as providing guidance on the elements the California Legislature believed were needed for conducting a fair administrative hearing. The Court concluded that “one of the basic tenants of the California APA ... is that, to promote both the appearance of fairness and the absence of even a probability of outside influence on administrative hearings, the prosecutorial and, to a lesser extent, investigatory aspect of administrative matters must be adequately separated from the adjudicatory function.” (*Id.* at 91.) The Appellate Court thus found that where “counsel performs as an advocate in a given case [he or she] is generally precluded from advising a decision-making body in the same case,” with the Court then finding that the “adjudicative function” must be separate from the “investigative, prosecutorial and advocacy functions within the agency.” (*Id.* at 92.)

With this Notice of Hearing, and similar to the 2006 hearing conducted before the Regional Board to incorporate the SMB TMDL, the Regional Board is proposing to utilize a “single” counsel to “advise and assist” both “the Board members and its entire staff.” Because

Ivar Ridgeway
July 20, 2012
Page 7

the substance of this hearing concerns the adoption of a very lengthy, highly complex and hotly disputed NPDES permit that is being proposed by Board Staff over the objections of a number of the affected Permittees, with the Hearing Notice confirming that Board Staff will be making a “staff presentation” and will be “advising and assisting the Los Angeles Water Board” in the course of the hearing, to suggest the Proposed Permit, can lawfully be conducted with the “same” counsel advising and assisting both the Board and its “entire staff,” is a clear and direct violation of California Law.

II. BASED ON CONTROLLING LAW AND THE EVIDENCE, THE PROPOSED PERMIT CANNOT LAWFULLY BE ADOPTED AT THIS TIME

The Proposed Permit cannot lawfully be adopted at this time for the following reasons:

(1) The Regional Board has no authority to issue a system-wide NPDES Permit or Waste Discharge Requirements (“WDRs”) to parties such as Signal Hill, who have applied for their own separate permits, and not a system-wide NPDES Permit or WDRs;

(2) The Proposed Permit terms requiring a Permittee involved in a co-mingled discharge to prove it did not cause or contribute to an alleged exceedance, violates basic tenants of due process of law and is fundamentally unenforceable.

(3) The numerous provisions in the Proposed Permit requiring compliance with either water quality-based effluent limits, receiving water limits or other numeric limits, exceeds the Clean Water Act requirements and otherwise violate applicable State laws and policy.

Ivar Ridgeway
July 20, 2012
Page 8

(4) The Proposed Permit should be revised to be consistent with the maximum extent practicable (“MEP”) standard provided for under the Clean Water Act (“CWA” or “Act”), by specifically allowing for deemed compliance through an iterative/adaptive management process.

(5) The numeric limits sought to be imposed under the Proposed Permit are in many cases impossible to comply with, and as such, are contrary to law.

(6) The “Discharge Prohibition” terms of the Proposed Permit impose a higher standard than the MEP Standard on the Permittees, and thus are inconsistent with federal law and are contrary to State law.

(7) The Proposed Permit terms requiring compliance with numeric limits, irrespective of the MEP standard, along with the new Discharge Prohibition terms, were not adopted in accordance with the requirements of California Water Code (“CWC”) sections 13000, 13263 and 13241.

(8) The Proposed Permit Monitoring and Reporting Program requirements, and related terms throughout the Proposed Permit were not developed in accordance with the requirements under CWC sections 13267, 13225 and 13165.

(9) The California Environmental Quality Act (“CEQA”) preempts the Planning and Land Development Program requirements contained in the Proposed Permit restricting and conditioning New Development and Redevelopment Projects by imposing various numeric

Ivar Ridgeway
July 20, 2012
Page 9

design conditions on such projects, and by imposing new Low Impact Development (“LID”) and Hydro-modification requirements on all such projects.

(10) Various portions of the Permit impose unfunded State mandates upon the permittee local agencies, and all such unfunded mandates will require that funds be provided to the Permittees by the State, in accordance with the California Constitution.

A. **The Regional Board is Without Authority To Issue A System-Wide MS4 Permit or WDRs to Parties Who Filed Separate ROWD/Permit Applications and Who Have Not Agreed to be Included as Co-Permittees in a System-wide Permit.**

In June of 2006, the City of Signal Hill (and other cities) submitted separate ROWD/NPDES permit applications for their own separate NPDES Permits so as to obtain permit coverage specific to their respective jurisdictions. (See Exhibits ”2,” Signal Hill 2006 ROWD/NPDES Application.)

Finding C “Permit Application” of the Proposed Permit (pp. 14-15) sets forth the Regional Board’s proposed reasoning for failing to act on Signal Hill’s and the other separately submitted ROWDs, and for the proposed decision to instead issue a single system-wide NPDES Permit for the County, the County Flood Control District and all cities within the County of Los Angeles, *“except the City of Long Beach.”* The Regional Boards’ refusal to issue a separate NPDES Permit to Signal Hill, and to instead include Signal Hill in a single system-wide permit, is not authorized anywhere under the Clean Water Act or State law, and, as such, is contrary to such laws.

Ivar Ridgeway
July 20, 2012
Page 10

As referenced in Finding C, in response to Signal Hill's ROWD submittal, the Executive Officer sent a letter dated July 12, 2006, wherein Board Staff asserted (wrongly) that the ROWD/Permit application submitted by Signal Hill was "incomplete." (See Exhibit "3" – July 12, 2006 letter to Signal Hill; *also* see Proposed Permit, p. 9, Finding C.) Nowhere in this letter, however, did the Executive Officer ever indicate that the Regional Board would refuse to issue an individual permit to Signal Hill, and instead, indicated the opposite, *i.e.*, that the City was "*proposing some positive changes*" to its NPDES Permit, and that Board Staff looked "*forward to working out these details with your Staff during the MS4 Permit Reapplication Process.*" (See Exhibits "3," p. 2.)

In addition, according to Proposed Permit Finding C, the Regional Board Staff sent similar notices to all other ROWD/NPDES Permit applicants, and purportedly determined that each and every ROWD submitted to it was incomplete, including the Joint ROWD submitted by the County of Los Angeles and a large number of Los Angeles County cities. (Proposed Permit, pp. 14-15, Findings C.)

What has been omitted from the Board's Finding C is that, on September 12, 2006, Signal Hill responded to the Executive Officer's July 12, 2006 letter, and explained, in response to each of the points raised in the letter, that Signal Hill's ROWD was consistent with the requirements of federal law, and satisfied the requirements of the federal regulations, including EPA's Interpretative Policy Memorandum. (Exhibit "4," p. 4.) Signal Hill's letter concluded that the City also looked forward to working with the Executive Officer to address the relevant

Ivar Ridgeway
July 20, 2012
Page 11

issues and to the “*reissuance of the subject Municipal NPDES Permit for the City.*” (*Id.*) Unfortunately, neither the Executive Officer nor any other Regional Board Staff person ever provided a written response to Signal Hill’s September 12, 2006, letter.

In Finding C, Regional Board Staff relies upon 40 CFR 122.26(a)(1)(v) to argue that it has the “discretion as a permitting authority to determine whether to issue permits for discharges from MS4s on a system-wide or jurisdiction-wide basis.” The assertion, however, is legally in error, as it is clear from the relevant regulations that the Regional Board has no authority to force a city into a system-wide permit, particularly when the city has not first agreed to such by filing a Joint ROWD Application, and when the city has specifically separately applied for its own individual NPDES Permit and thus expressed its desire *not* to be a part of a system-wide permit.

Although 40 CFR § 122.26(a)(5) authorizes the issuance of a system-wide permit *if* a system-wide permit has been applied for, it does not authorize the issuance of a system-wide permit to a city who has not applied for such. Section 122.26(a)(iii) provides, in relevant part, as follows:

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must **either:**

(A) **Participate in a permit application (to be a permittee or to be a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system; [or]**

Ivar Ridgeway
July 20, 2012
Page 12

(B) **Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.**

Accordingly, under the plain language of 40 CFR section 122.26(a)(3)(iii), an MS4 discharger has the express ability to either submit a permit application in conjunction with other MS4 operators, or alternatively, to submit a *“distinct permit application which only covers discharges from the”* MS4 system in question. As such, only when a joint application is submitted for all or a portion of the MS4 system, then and only then does the Regional Board have the authority to approve the issuance of a system-wide NPDES Permit that covers those applying municipalities. There is, however, nothing anywhere in the regulations or under other federal law that allows a Regional Board to force a permit applicant to become a part of a system-wide permit, where it never applied for a system-wide permit with other co-permittees, and where it specifically filed, as Signal Hill has done, a *“distinct permit application which only covers discharges from the municipal separate storm sewer for which the operator is responsible.”* (40 CFR § 122.26(a)(3)(iii).)

In addition, there is specific authority which confirms that individual dischargers have the right to apply for their own individual permits and, when doing so, that a joint system-wide permit cannot properly be issued unless the applicant has not first agreed to be part of the system-wide application. In particular, for small MS4 Permittees (which would include the City of Signal Hill), the regulations are clear that cities such as Signal Hill cannot be forced into a joint system-wide NPDES Permit. Federal Regulations, 40 CFR sections 122.30 – 122.37

Ivar Ridgeway
July 20, 2012
Page 13

identify the permitting and application requirements for small MS4 dischargers. Section 122.33 is entitled "*If I am an operator of a regulated small MS4, how do I apply for an NPDES Permit and when do I have to apply?*" This section then provides, in relevant part, as follows:

(b) You must seek authorization to discharge under a general or individual NPDES Permit, as follows:

(i) if your NPDES permitting authority has issued a general permit applicable to your discharge **and you are seeking coverage under the general permit**, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by § 122.34(d). **You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities**, you must submit an NOI that describes which minimum measures you will implement **and identify the entities that will implement the other minimum measures within the area served by your MS4. . . .**

(2)(i) **If you are seeking authorization to discharge under an individual permit and wish to implement a program under § 122.34, you must submit an application to your NPDES permitting authority that includes the information required under §§ 122.21(f) and 122.34(d), an estimate of square mileage served by your small MS4, and any additional information that your NPDES permitting authority requests. . . .**

(ii) **If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under § 122.34, you will need to comply with the permit application requirements of § 122.26(d). . . .**

(iii) **If allowed by your permitting authority, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.**

(3) **If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you**

Ivar Ridgeway
July 20, 2012
Page 14

as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the Permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of § 122.26, rather than the requirements of § 122.34. You do not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in § 122.26(d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4 stormwater management program.

From the clear language of sections 122.33 and 122.26(a)(3)(iii), it is apparent that any individual MS4 operator has the right to apply for and obtain its own individual NPDES Permit, and that no individual MS4 Permittee can be forced upon a city, against its will and without the agreement of the various other jurisdictions to be included in the joint systems-wide permit. Instead, to be included in a joint, system-wide permit, all of the parties thereunder must agree to be a part of, and bound by, the permit terms of such a system-wide Permit. (40 CFR §§ 122.26(a)(3)(iii) and 122.33.)

The clear intent of the regulations is to allow individual permittees to have control over the discharges for which they are to be responsible, and to only need rely upon their individual programs, if they so desire, to comply with the NPDES requirements applicable to their jurisdiction. To the extent an individual permittee wishes to be a part of a system-wide NPDES Permit, or to rely upon the efforts of others to meet its permit terms, it has that right as well.

Refusing to issue a separate permit to the City of Signal Hill is not only contrary to law, as described above, it similarly would be an entirely arbitrary and capricious decision. Specifically, it must be recognized that Signal Hill, which is, in effect, an island within the City

Ivar Ridgeway
July 20, 2012
Page 15

of Long Beach, is seeking its own separate permit in light of the separate and distinct types of dischargers associated with Signal Hill's discharges which do not flow directly into any other jurisdictions/cities listed as "Permittees" under the Proposed Permit. Moreover, the City of Long Beach is specifically excepted out of the Proposed Permit, and in fact Long Beach was issued its own separate permit as far back as 1999, and has been operating under that permit ever since. The attached oral and power-point presentation presented to the Regional Board at a meeting on June 7, 2012 (Exhibit "5"), not only shows that Signal Hill is an island within the City of Long Beach, but also the unique nature and differences in the discharges from the City of Signal Hill versus the other cities and jurisdictions identified as Permittees under the Proposed Permit.

In light of the differences associated with discharges from the MS4 system within Signal Hill, and given the fact that the City of Long Beach has long since had its own separate permit, along with the fact that Signal Hill is surrounded entirely by the City of Long Beach, not only is there no legal basis in which to deny Signal Hill its own separate permit, there is similarly no factual or evidentiary basis upon which to force Signal Hill to be included as a permittee in the proposed system wide permit. Providing Long Beach a separate permit over thirteen years ago, but denying the same to Signal Hill, who is entirely surrounded by Long Beach and who has applied for its own separate permit, is proof positive that there is no rational justification that may be offered by the Regional Board for not providing Signal Hill with its own separate permit.

In short, the Regional Board has no discretion to force a system-wide NPDES Permit on an individual city who has submitted a "*distinct permit application which only covers*

Ivar Ridgeway
July 20, 2012
Page 16

discharges from the municipal separate storm sewers for which the operator was responsible.”

(§ 122.26(a)(3)(iii)(B).) This plain language, combined with the clear language under 40 CFR § 122.33 (applicable to small MS4s such as Signal Hill) along with the fact that Signal Hill is surrounded by another City (Long Beach) who is itself “exempt” out from the Proposed Permit, show there is no rational basis to deny Signal Hill its own separate permit.

B. The Proposed Permit Terms Requiring A Permittee Involved In A Comingled Discharge To Prove It Did Not Cause Or Contribute To An Alleged Exceedance Violates Basic Tenants Of Due Process Of Law And Is Fundamentally Unenforceable.

Even though the Proposed Permit recognizes that “federal regulations state that co-permittees need *only comply* with permit conditions relating to discharges from the MS4 for which they are owners or operators (40 CFR § 122.26(a)(3)(vi))” (Proposed Permit, p. 22), it also then inconsistently provides that “*Permittees with co-mingled MS4 discharges are jointly responsible* for meeting the water quality-based effluent limitations and receiving water limitations assigned to MS4 discharges in this Order.” (*Id.*) The Proposed Permit goes on to provide that “*joint responsibility*” not only means that the Permittees with co-mingled MS4 discharges are responsible for implementing programs in their respective jurisdictions, but further that they are responsible “to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such comingled MS4 discharges.” (*Id.*)

Ivar Ridgeway
July 20, 2012
Page 17

Yet, the Proposed Permit, almost as if it is recognizing the illegality of its attempt to impose joint and several liability on Permittees, then attempts to diminish the impropriety of such terms by providing that:

Additionally, this Order allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving water limitations. If such a demonstration is made, though the Permittees' discharge may comingle with that of other Permittees, the Permittee would not be held jointly responsible for the exceedance of the water quality-based effluent limitation or receiving water limitation. Individual co-permittees who demonstrate compliance with the water quality-based effluent limitations will not be held responsible for violations by non-compliance co-permittees.

(Proposed Permit, p. 22; also see Proposed Permit, p. 40 [*“Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries. Permittees are not responsible for the implementation of the provisions applicable to other Permittees.”*]; and p. 112 [*“In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators. [] Where permittees have comingled discharges to the receiving water, compliance at the outfall to the receiving water or in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart v. below.”*].)

Ivar Ridgeway
July 20, 2012
Page 18

Accordingly, the Proposed Permit makes two things clear. First, it confirms that the Clean Water Act only imposes an obligation on Permittees to comply with permit conditions relating to discharges from an MS4 for which they are owners or operators. (*See*, e.g., Proposed Permit, p. 22.) Second, however, it turns this undisputed legal principle, i.e., that one is not responsible for another's discharge, on its head, by flip flopping the burden of proof and presuming a Permittee is responsible for a comingled exceedance "*unless the Permittee*" can "*demonstrate* that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving water limitations." (*Id.* at p. 22.) The theory of a presumed violation of law for a comingled exceedance is, however, plainly a theory that is contrary to the clear terms of the Clean Water Act and the Porter-Colon Act; and worse, violates fundamental principles of due process of law.

Under the regulations to the Clean Water Act, it is undisputed that "Co-permittees need only comply with permit conditions *relating to discharges* from the municipal separate storm sewers *for which they are operators*." (40 CFR § 122.26(a)(3)(vi).) Irrefutable case authority, moreover, confirms that the Regional Board has the burden of proofing liability against an individual Permittee, regardless of whether or not there is a comingled exceedance, and that there is no such thing as "presumed," nor joint and several liability under either the Clean Water Act or the Porter-Cologne Act.

For example, in an action seeking penalties under the Clean Water Act ("CWA"), the United States Supreme Court held that the burden of proof is placed squarely upon the shoulders

Ivar Ridgeway
July 20, 2012
Page 19

of the agency or third-party plaintiff, in that said Plaintiff must establish that the discharger has violated the CWA: “[T]he agency must prove that the contaminant-laden waters ultimately reach covered waters.” (*Rapanos v. United States* (2006) 547 U.S. 715, 745.)

Similarly, according to the Ninth Circuit Court of Appeals:

Given that the CWA does not empower the EPA to bring an enforcement action on the basis of a violation of a compliance order alone, it follows that a court cannot assess penalties for violations of a compliance order under § 1319(d) **unless the EPA also proves, by a preponderance of the evidence, that the defendants actually violated the CWA in the manner alleged.**

...

We further interpret the CWA to require that penalties for noncompliance with a compliance order be assessed only after the EPA proves, in district court, and according to traditional rules of evidence and burdens of proof, that the defendants violated the CWA in the manner alleged in the compliance order.

(*Sackett v. E.P.A.* (9th Cir. 2010) 622 F.3d 1139, 1145-47 [emphasis added] [reversed on other grounds, *Sackett v. E.P.A.* (2012) 132 S. Ct. 1367].)

In fact, in a recent case specifically involving alleged co-mingled discharges in the Los Angeles Region, the Ninth Circuit Court of Appeal expressly rejected the very theory of presumed liability the Regional Board is putting forth with the Proposed Permit, where the Court found as follows:

Ivar Ridgeway
July 20, 2012
Page 20

[W]e agree with the district court that, as the record is currently constituted, it is not possible to mete out responsibility for exceedances detected in the Santa Clara River and Malibu Creek (Claims 1 and 4). Like the district court, we are unable to identify the relationship between the MS4 and these mass-emissions stations. From the record, it appears that both monitoring stations are located within the rivers themselves. Plaintiffs have not endeavored to provide the Court with a map or cogent explanation of the inter-workings or connections of this complicated drainage system. We recognize that both the Santa Clara and Malibu Creek Monitoring Stations are downstream from hundreds or thousands of storm drains and MS4 channels. It is highly likely, but on this record nothing more than assumption, that polluted stormwater exits the MS4 controlled by the District and the County, and flows downstream in these rivers past the mass-emissions stations. To establish a violation, Plaintiffs were obligated to spell out this process for the district court's consideration and to spotlight how the flow of water from an ms4 "contributed" to a water-quality exceedance detected at the Monitoring Stations.

(*NRDC v. County of Los Angeles* (2011) 673 F.3d 880, 901, petition for writ of certiorari granted in part, on other grounds, *NRDC v. County of Los Angeles*, 2012 U.S. LEXIS 4832 (2012).)

Other courts have similarly recognized that the plaintiff in a CWA case bears the burden of proving a violation. (See, e.g., *United States v. Range Prod. Co.* (N.D. Tx. 2011) 793 F. Supp 2d 814, 823 [court expressed doubt that civil penalties can be obtained without EPA ever proving defendant actually caused contamination]; *Humane Soc'y of the United States v. HVFG, LLC* (S.D.N.Y. 2010) 2010 US Dist LEXIS 44961, *21 [***Plaintiff has demonstrated*** sufficient undisputed material facts to prove that Defendant violated both its Slaughterhouse and CAFO SPDES Permits" (emphasis added)].) *In the Matter of Vos*, 2009 EPA ALJ LEXIS 8, an Administrative Law Judge similarly concluded as follows:

Ivar Ridgeway
July 20, 2012
Page 21

EPA failed to prove by preponderance of evidence that animal feedlot violated of 33 USCS § 1342 by its failure to apply for a National Pollutant Discharge Elimination System permit where, although EPA presented some evidence from which one could infer that feedlot discharged pollutants to waters of United States, such inferences were not equivalent of proof of actual discharge

...

EPA cannot be expected to be stationed at a given site to obtain evidence of a discharge, [but] the evidence EPA did muster falls far short of their burden to prove that there was an actual discharge from Vos' feedlot to waters of the U.S . . . merely showing that water flows downhill is insufficient to meet EPA's burden of proof.

(In the Matter of Vos, supra, [internal citations omitted] [emphasis added].)

Similarly, under California law the Regional Board plainly bears the burden of proving a violation of the Porter-Cologne Act. To start with, pursuant to Evidence section 500, “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” The Porter-Cologne Act, of course, does not otherwise provide otherwise *i.e.*, for the burden to be shifted to the defendant, and the language at issue in the Proposed Permit is therefore contrary to State law as well.

California Courts interpreting the Porter-Cologne Act have confirmed that the plaintiff does indeed bear the burden of proving a violation. (*See, State of California v. City and County of San Francisco* (1979) 94 Cal.App.3d 522, 530 [“once *plaintiff had proved that there had been a discharge in violation of the Water Code* it became defendant’s burden to establish, by a

Ivar Ridgeway
July 20, 2012
Page 22

preponderance of the evidence, that the amount of penalty imposed should be less than the maximum”].) *City and County of San Francisco* clearly shows that even if a burden is shifted, it is shifted only *after* the actual violation is first proven *by plaintiff*.

Finally, in *Tull v. United States* (1987) 481 U.S. 412, there, the U.S. Supreme Court found that the Government’s action for civil penalties under the Clean Water Act was a legal remedy akin to an 18th century action in debt, and thus, that there is a constitutional right to a trial by jury to determine liability. (*Id.* at 417-422.) The reasoning in *Tull* is analogous to the holding in *City and County of San Francisco*, *supra*, which held that the plaintiff has the burden of proving the threshold issue of liability under the Porter-Cologne Act. These cases all clearly show that liability under either the CWA or the Porter-Cologne Act triggers constitutional protections, and that the burden is on a plaintiff to prove a violation of one of these statutes, not the other way around. The regulations, furthermore, show quite conclusively that a particular alleged violation is only responsible for its own discharges and not discharges of others. (40 CFR § 1222.26(a)(3)(vi).)

In this case, the Proposed Permit not only contains a presumption of liability if there is a comingled exceedance, to add insult to injury, it recognizes that a Permittee violating the Permit may incur penalties, including mandatory maximum penalties. (Proposed Permit, p. 43-44.) In light of the above decisions, however, it is clear that the concept of “presumed guilt” is not an accepted principle of justice within the American System of Jurisprudence, and violates basic tenants of due process of law, plain statutory requirements and well-established precedent, to

Ivar Ridgeway
July 20, 2012
Page 23

presume a Permittee is in violation of the Permit and subject to penalties wherever there is a co-mingled exceedance. As such, all such terms must be deleted from the Proposed Permit.

C. The Numerous Provisions In The Proposed Permit Requiring Compliance With Various Forms Of Numeric Effluent Limits, Either Through WQBELs Or Receiving Water Limits, Exceed The Clean Water Act's Requirements For MS4 Permittees, And Otherwise Violate State Law And Policy.

1. The Inclusion Of Numeric Limits In The Form Of Numeric WQBELs Or Receiving Water Limits, As A Matter Of Law, Go Beyond The MEP Standard And State Law and Policy.

Part V of the Proposed Permit entitled "Receiving Water Limitations," has been explained in past State Board rulings as being an "iterative process." It was initially included and developed based on State Board Order No. 98-01, as amended by State Board Order No. 99-05. According to State Board Order No. 99-05, "so long as the Permittees have complied with the procedures [the iterative process procedures] set forth above and are implementing the revised SWMP, the Permittees do not have to repeat the same procedure for a continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board to develop additional BMPs." (See Exhibit "6," State Board Order No. 99-05.)

In State Board Order No. 2001-15, the State Board confirmed that the process to be followed in municipal NPDES Permits towards achieving compliance with Water Quality Standards is to be an "iterative process," which focuses on timely improvements of BMPs:

We will generally not require 'strict compliance' with water quality standards through numeric effluent limitations and we continue to follow an iterative approach, which seeks compliance over time. The iterative approach is protective of

Ivar Ridgeway
July 20, 2012
Page 24

water quality, but at the same time considers the difficulty of achieving full compliance through BMPs that must be enforced throughout large and medium municipal storm sewer systems.

(State Board Order No. 2001-15, p. 8, attached hereto as Exhibit "7.") In fact, the permit that was the subject of State Board Order No. 2001-15 was a San Diego MS4 NPDES Permit with the State Board finding that the San Diego Permit was deficient, because it did not make clear that the "iterative process" was to be applied to both the receiving water limitation language as well as the language concerning exceedances of water quality objectives. (*Id.*)

Similarly, in State Board Order No. 2001-12 DWQ, involving a general NPDES Permit for discharges of aquatic pesticides to surface waters, the State Board included specific language to be consistent with the "iterative process" discussed in Order No. 2001-15. The Receiving Water Limitation language included in Order No. 2001-12 DWQ provided, in part, that: "*A discharger will not be in violation of receiving water limitation f.2 as long as the discharger has implemented the BMPs required by this general permit and the following procedure is followed:*" (See Exhibit "8," Order No. 2001-12 DWQ, p. 9.)

In addition, in a Memorandum issued by the then Chair of the Regional Board, Francine Diamond, in commenting on the need for the Regional Board to follow the "iterative process," and not to "depart from its provisions in any significant way," Ms. Diamond stated as follows:

The former provision on receiving water language and what has come to be known as the "iterative" process is language previously approved by the State Water Resources Control Board. This language has been contained in all municipal storm water permits in California since 1999. The State Board shaped

Ivar Ridgeway
July 20, 2012
Page 25

the language as part of a precedential decision to address the concerns of dischargers and the environmental community, and to protect water quality. **Because the language arises from a State Board precedential decision, the Regional Board did not have the discretion to depart from its provisions in any significant way.** (See Exhibit "9," January 30, 2002 Memorandum from Francine Diamond ("Diamond Memo"), p. 1-2.)

Ms. Diamond went on to find that a "key aspect" of complying with the "iterative process" is for the Permittee to make "a good faith effort" to comply:

The receiving water compliance process outlined in the permit allows for each Permittee to work cooperatively with the Regional Board to identify additional measures, if required, to improve water quality to meet receiving water standards. If the measures adopted do not achieve that result, further measures can be developed. This iterative approach is intended to obtain progress over time. The provision is expressly intended to serve as the vehicle by which the Regional Board will obtain Permittee compliance with receiving water standards. **To that end, the key aspect is that a good faith effort be pursued by Permittees to utilize this process.** (Exhibit "9," Diamond Memo, p. 2.)

The Proposed Permit seeks "to modify the iterative process," contrary to the process set forth under State Board Order No. 99-05, and contrary to the Diamond Memo, particularly with the inclusion of language (specifically in Parts V. and VI.E.) that would hold Permittees in violation of the Permit, irrespective of their "good faith efforts" to comply and implement iterative MEP-compliant BMPs. For example, Part VI.E.2.e of the Proposed Permit requires a Permittee to demonstrate "[t]here are no violations of the final water quality-based effluent limitation" and "[t]here are no exceedance of applicable receiving water limitation for the specific pollutant in the receiving water(s) and/or downstream of, the Permittee's outfall(s)." (Proposed Permit, p. 114.) The inclusion of this and other language in Parts V, and VI.E, as discussed below, is not required by federal law and is contrary to State law and policy. Such

Ivar Ridgeway
July 20, 2012
Page 26

language was similarly not developed in accordance with the requirements of State law, as described below, namely CWC sections 13241, 13263 and 13000.

There can be no legitimate debate that federal law does not compel the use of numeric effluent limits in municipal NPDES permits. For example, in *BIA of San Diego County v. State Board* (2004) 124 Cal.App.4th 866, 874, the California Court of Appeal acknowledged that the CWA is to be applied differently to municipal Stormwater dischargers than to industrial Stormwater dischargers, finding as follows:

“In 1987, Congress amended the Clean Water Act to add provisions that specifically concerned NPDES permit requirements for storm sewer discharges. [Citations.] In these amendments, enacted as part of the *Water Quality Act of 1987*, Congress distinguished between industrial and municipal storm water discharges. . . . With respect to *municipal* storm water discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose “controls to reduce the discharge of pollutants to the maximum extent practicable.”

(*Id.*, citing 33 USC § 1342 (p)(3)(B)(iii) and *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163 (“*Defenders*”) (bolding added, italics in original).)

In *Defenders*, the Ninth Circuit recognized the different approach taken by Congress for Stormwater, finding that “*industrial discharges must comply strictly with state water-quality standards,*” while Congress chose “*not to include a similar provision for municipal storm-sewer discharges.*” (191 F.3d at 1165, emphasis added.) The Court found that “because 33 U.S.C. § 1342(p)(3)(B) is not merely silent regarding whether municipal discharges must comply

Ivar Ridgeway
July 20, 2012
Page 27

with 33 U.S.C. § 1311,” but instead section 1342(p)(3)(B)(iii) [of the CWA] “*replaces the requirements of § 1311 with the requirement that municipal storm-sewer dischargers ‘reduce the discharge of pollutants to the maximum extent practicable.’*” The Court then held that “*the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).*” (*Id.* at 1165; also see *Divers’ Environmental Conservation Organization v. State Water Resources Control Board (Divers’ Environmental)* (2006) 145 Cal.App.4th 246, 256, emphasis added [*“In regulating stormwater permits the EPA has repeatedly expressed a preference for doing so by the way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations.”*].)

In the *Divers’ Environmental* case, the plaintiff brought suit claiming that an NPDES Permit issued to the United States Navy by the San Diego Regional Board was contrary to law because it did not incorporate waste load allocations (“WLAs”) from a TMDL as numeric effluent limits into the Navy’s permit. After discussing the relevant requirements of the Clean Water Act, as well as governing case authority, the Court of Appeal acknowledged that in regulating stormwater permits EPA “*has repeatedly expressed a preference for doing so by the way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations.*” (*Id.* at 256.) The Court went on to find that “*it is now clear that in implementing numeric water quality standards, such as those set forth in CTR, permitting*

Ivar Ridgeway
July 20, 2012
Page 28

agencies are not required to do so solely by means of a corresponding numeric WQBEL's [water quality based effluent limit].” (Id. at 262.)

Further, in a recent Appellate Court decision from the State of Oregon, *Tualatin River Keepers, et al. v. Oregon Department of Environmental Quality* (2010) 235 Ore. App. 132, the Oregon Court of Appeal similarly considered the need for WLAs from within a developed TMDLs to be enforced as strict numeric effluent limits within a municipal NPDES permit. The petitioners in that case as well argued that the Oregon Department of Environmental Quality (“DEQ”) had erred because it issued a permit that did not “specify wasteload allocations in the form of numeric effluent limits.” (*Id.* at 137.) The Oregon Court discussed the purpose of a TMDL, noting it is required to be established for pollutants and waters of the State that are identified pursuant to section 1313(d) of the CWA, and went on to address petitioners’ contention that the wasteload allocations were required under State law to have been incorporated into the Permit “in a meaningful way,” *i.e.*, through the use of numeric effluent limits. (*Id.* at 147-148.)

What was not even argued in *Tualatin* was that federal law required a TMDL to be incorporated into a municipal NPDES Permit as a “numeric effluent limitation.” Instead, the Court found that under the CWA, best management practices were considered to be a “type of effluent limitation,” and that such best management practices were authorized to be used pursuant to the CWA, section 33 U.S.C. § 1342(p) as a means of controlling “storm water discharges.” (*Id.* at 141-142, citing 33 U.S.C. § 1342(p) and 40 CFR § 122.44(k)(2)-(3).) The

Ivar Ridgeway
July 20, 2012
Page 29

Court in *Tualatin* concluded that Oregon law did not require that TMDLs be enforced through the use of numeric effluent limits, finding as follows:

The applicable TMDLs in this case set forth specific wasteload allocations for municipal storm water. The permits at issue, in turn, indicate the bodies of water for which TMDLs and wasteload allocations have been established and reference the specific TMDL for those bodies of water. **The permits provide in the “adaptive management” section that, “[w]here TMDL wasteload allocations have been established for pollutant parameters associated with the permittee’s [municipal separate storm sewer system] discharges, the permittee must use the estimated pollutant load reductions (benchmarks) established in the [storm water management plan] to guide the adaptive management process.” ... Adequate progress toward achieving assigned wasteload allocations will be demonstrated through the implementation of best management practices that are targeted at TMDL-related pollutants.** Pursuant to that section, permittees must evaluate progress toward reducing pollutant loads “through the use of performance measures and pollutant load reduction benchmarks developed and listed in the [stormwater management plan].”

* * *

Although the permits do not themselves include numeric wasteload allocations like those set forth in the TMDLs, the TMDL wasteload allocations are clearly referenced in the permits, and the permits require implementation of best management practices, set forth in the storm water management plans, to make progress towards meeting those wasteload allocations. Again, best management practices are a type of effluent limitation that is used in municipal storm water permits. See 40 CFR § 122.44(k)(2)-(13). Furthermore, the permits incorporate benchmarks, through incorporation of the storm water management plan, which are specific pollutant load reduction goals for the permittees. Those measures are “permit requirements” that properly incorporate the TMDL wasteload allocations.

Ivar Ridgeway
July 20, 2012
Page 30

(*Id.* at 148-149, emphasis added.)

Similarly, as discussed in part further below, it has long since been the policy of the State of California not to require the use of strict numeric limits for stormwater (urban runoff) dischargers, but rather to apply the MEP standard through an iterative BMP process. (*See, e.g., Exhibit "10,"* State Board Order No. 91-04, p. 14 [*"There are **no numeric objectives** or **numeric effluent limits** required at this time, either in the Basin Plan or any statewide plan that apply to storm water discharges."* p. 14]; *Exhibit "11,"* State Board Order No. 91-03, [*"We . . . conclude that numeric effluent limitations are not legally required. Further, we have determined that the program of prohibitions, source control measures and 'best management practices' set forth in the permit constitutes effluent limitations as required by law."*]; *Exhibit "12,"* State Board Order No. 96-13, p. 6 [*"federal laws does not require* the [San Francisco Reg. Bd] to dictate the specific controls."]; *Exhibit "13,"* State Board Order No. 98-01, p. 12 [*"Stormwater permits must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality-based effluent limitations."*]; *Exhibit "14,"* State Board Order No. 2000-11, p. 3 [*"In prior Orders this Board has explained the need for the municipal storm water programs and the emphasis on BMPs in lieu of numeric effluent limitations."*]; *Exhibit "7,"* State Board Order No. 2001-15, p. 8 [*"While we continue to address water quality standards in municipal storm water permits, we also continue to believe that **the iterative approach**, which focuses on timely improvements of BMPs, is appropriate."*]; *Exhibit "15,"* State Board Order No. 2006-12, p. 17 [*"Federal regulations do not*

Ivar Ridgeway
July 20, 2012
Page 31

*require numeric effluent limitations for discharges of storm water”]; Exhibit ”16,” Stormwater Quality Panel Recommendations to The California State Water Resources Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities, June 19, 2006, p. 8 [**“It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers.”**]; and Exhibit ”17,” an April 18, 2008 letter from the State Board’s Chief Counsel to the Commission on State Mandates, p. 6 [**“Most NPDES Permits are largely comprised of numeric limitations for pollutants. . . . Stormwater permits, on the other hand, usually require dischargers to implement BMPs.”**].)*

Moreover, in a report issued by the National Research Council entitled “*Assessing the TMDL Approach to Water Quality Management*,” 2001 (Exhibit ”18”) the NRC concluded as follows:

Many debates in the TMDL community have centered on the use of “phased” and “iterative” TMDLs. Because these terms have particular meanings, this report uses a more general term – adaptive implementation. **Adaptive implementation is, in fact, the application of the scientific method to decision-making. It is a process of taking actions of limited scope commensurate with available data and information to continuously improve our understanding of a problem and its solutions, while at the same time making progress toward attaining a water quality standard.** (Exhibit ”18,” p. 90.)

With the inclusion of the various numeric limits set forth in Parts V. and VI. E. of the Proposed Permit, which are designed to require the Permittees to develop and implement impracticable BMPs, *e.g.*, BMPs that are not economically feasible, where necessary to achieve

Ivar Ridgeway
July 20, 2012
Page 32

strict compliance with receiving water limits or WQBELs, the Regional Board is imposing permit terms that are not required by federal law, and that are inconsistent with State law and policy. Further, as discussed below, imposing Permit terms that will result in the development and implementation of impracticable and/or technically or economically infeasible BMPs, are requirements that are, by definition, contrary to CWC sections 13263, 13241 and 13000.

2. The Proposed Permit Requires The MS4 Permittees Comply With Numeric Limits.

The Proposed Permit imposes a series of provisions designed to require that the Permittees strictly comply with numeric effluent limits, either through the incorporation of waste load allocations (“WLAs”) from total maximum daily loads (“TMDLs”) – which have been incorporated into the Permit as final or interim water quality based effluent limits (“WQBEL”) – or through numeric receiving water limits (which appear to require strict compliance with water quality standards, irrespective of compliance with an iterative/adaptive management process). (Proposed Permit, Parts V and VI.E.) The Proposed Permit also makes clear that when the applicable numeric limits have not been complied with, that a Permittee will be subject to penalties, including, mandatory minimum penalties. (Proposed Permit, pp. 43-44.)

Initially, Part V of the Permit, entitled “Receiving Water Limitations,” prohibits “discharges from the MS4 that cause or contribute to the violation of receiving water limitations.” (Proposed Permit, p. 37.) Moreover, although the Proposed Permit allows the Permittees to follow an iterative/adaptive management process in attempting to comply with

Ivar Ridgeway
July 20, 2012
Page 33

such receiving water limits, it similarly makes clear that this iterative/adaptive management process only relieves the Permittees of having to continue to develop new and additional iterative BMPs, and does not provide any form of “safe harbor” or other protections from allegations the Permittees have violated the receiving water limits language even if they are complying with the iterative/adaptive management process. (*See* Proposed Permit, p. 55 [*“The adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.”*].)

In short, the Receiving Water Limitations section requires that the Permittee strictly comply with applicable water quality standards, or otherwise face prosecution and/or third party citizen suits. (*See e.g., NRDC v. County of Los Angeles*, 673 F.3d 880 (9th Cir. 2011), cert granted, 2012 U.S. LEXIS 4823.)

In Part VI.E of the Proposed Permit entitled “Total Maximum Daily Load Provisions” the Permit requires that the Permittees achieve: (1) all final WQBELs and/or receiving water limitations that become effective so as to implement the applicable TMDLs (Proposed Permit, Part VI.E.2, p. 111-114); (2) all WQBELs and/or receiving water limitations to implement WLAs in State-adopted TMDLs where the final compliance deadlines have already passed (Proposed Permit, Part VI.E.4, pp. 116-117); (3) the interim and final water quality-based effluent limits for trash, which may be achieved through the use of certified full-capture systems (Proposed Permit, Part VI.E.5, pp. 116-123); (4) all interim WQBELs, except that compliance with interim WQBELs may be shown through the submission and implementation of an

Ivar Ridgeway
July 20, 2012
Page 34

approved Water Quality Management Program if the Program provides “*reasonable assurance that interim water quality-based effluent limitations will be achieved per applicable compliance schedules*” (Proposed Permit, Part VI.E.2.d, p. 113); and (5) the WLAs contained in applicable US EPA established TMDLs, through the use of best management practices (“BMPs”), along with a schedule for implementing the BMPs, in as short a time as possible through an approved Watershed Management Program – which presumably must again provide “reasonable assurances that ‘interim requirements and numeric milestones’ will be achieved” (*see* Proposed Permit, Part VI.E.3.c.v, p. 115) [providing that if a Water Quality Management Program is not submitted, the Permittee must demonstrate compliance with the numeric WLAs in the US EPA TMDL “*immediately.*”].)

The Findings set forth under Part II.J of the Proposed Permit similarly provides that Permittees must achieve compliance with the numeric WQBELs, where it requires that the Permittees “comply with the TMDL provisions in Part VI.E and Attachment L through R, which are consistent with the assumptions and requirements of the TMDL WLAs assigned to discharges from the Los Angeles County MS4.” (Proposed Permit, pp. 20-23.)

Accordingly, as discussed herein, the incorporation of TMDLs into the Permit as numeric requirements, along with the need to strictly adhere to receiving water limits in the Permit, represent the inclusion of requirements that ignore and exceed the MEP requirements under the Clean Water Act. Moreover, with the exception of those Permit provisions that allow for compliance through the submission of Watershed Management Plans, where “reasonable

Ivar Ridgeway
July 20, 2012
Page 35

assurance” can, in fact, be provided, or through the use of full-capture measures for trash TMDLs, where such full-capture measures are technically and economically feasible, all such terms similarly represent requirements that cannot possibly be complied with. The inclusion of all such numeric limits within the Permit is not supported by sufficient findings, the evidence, or applicable law.

D. The Proposed Permit Should Be Revised To Be Consistent With The Maximum Extent Practicable Standard By Specifically Allowing For Deemed Compliance Through An Iterative / Adaptive Management Process.

As explained further below, the proposed adaptive management process, i.e., an iterative process, as set forth in Part V of the Proposed Permit, does not provide the Permittees with any form of “safe harbor” or deemed compliance with the receiving water limitation section of the Permit, nor with the other terms of the Permit incorporating waste load allocations (“WLAs”) from TMDLs (Proposed Permit, Part VI.E). Instead, the Proposed Permit merely provides that complying with the “adaptive management process fulfills the requirements in V.A.4 to address continuing exceedances of receiving water limitations.” (Proposed Permit, p. 55.) Yet, this language does nothing to protect the Permittees from third-party citizen suits or enforcement actions under the Permit, even if the Permittees are, in fact, carrying out the adaptive management iterative process in good faith.

As discussed in detail above, rather than allowing municipalities to comply with the Permit terms through continued compliance with the adaptive management process/iterative process, i.e., to continue to implement BMPs that are consistent with the maximum extent

Ivar Ridgeway
July 20, 2012
Page 36

practicable standard as envisioned by Congress, the Proposed Permit makes clear that regardless of the MEP standard, numeric WQBELs and receiving water limits must be achieved. As discussed, moreover, imposing numeric limits on municipalities, in lieu of allowing for deemed compliance through the iterative BMP process, is a significant change in permit-writing policy in California, and is a change that ignores the reality that iterative BMPs are the only means by which municipalities have to comply with numeric WQBELs and receiving water limits. It is also a change that ignores the fact that requiring compliance with numeric limits will not in any way alter a Permittee's ability to achieve those limits or improve water quality.

In short, municipalities have no means of attempting to achieve compliance with numeric WQBELs and receiving water limits, other than through complying in good faith with an iterative/adaptive management process. The Regional Board's Proposed Permit which demands that the Permittees do more is simply not possible and will only result in more litigation and wasted resources, without any benefit to the public.

The Regional Board's desire to impose numeric limits on municipalities ignores the true limitations municipalities face when attempting to reduce the discharge of pollutants from their respective MS4 systems. There can be no dispute that municipal dischargers simply do not have the luxury of ceasing operations or installing a single or a series of filtration or treatment systems to eliminate pollutants from urban runoff. Municipalities do not generate the urban runoff, and cannot close a valve to prevent the rain from falling or runoff from entering the endless storm drain system. As such, to, in effect, conclude that municipalities must somehow develop BMPs

Ivar Ridgeway
July 20, 2012
Page 37

that go beyond the maximum extent practicable standard to meet numeric limits, is to require municipalities to develop and implement impracticable BMPs, *i.e.*, BMPs that are not technically and/or economically feasible.

The Proposed Permit includes a definition of the term “Maximum Extent Practicable” or “MEP.” (Proposed Permit, Attachment A, pp. A-5 to A-6.) This definition of MEP is based on a February 11, 1993 Memorandum issued by the State Board’s Office of Chief Counsel, subject “Definition of Maximum Extent Practicable” (Exhibit “19” hereto, hereafter “Chief Counsel Memo”). The definition of MEP in the Proposed Permit is as follows:

In selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to the maximum extent practicable. **This means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.** The following factors may be useful to consider:

1. Effectiveness: Will the BMP address a pollutant of concern?
2. Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?
3. Public acceptance: Does the BMP have public support?
4. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?

Ivar Ridgeway
July 20, 2012
Page 38

5. Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc.?

As noted in the Chief Counsel Memo, the term “MEP” as used by Congress was intended to include a requirement “*to reduce the discharge of pollutants, rather than totally prevent such discharge,*” and Congress presumably applied an MEP standard, rather than a strict numeric standard with the “*knowledge that it is not possible for municipal discharges to prevent the discharge of all pollutants in storm water.*” (Exhibit “19,” p. 2, emphasis added.)

Both the definition of MEP in the Proposed Permit and in the February 11, 1993, Chief Counsel Memorandum acknowledge the need to consider both “technical feasibility” and “cost,” including specifically asking: “*Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved.*” In effect, both the Memorandum and the definition of MEP in the Proposed Permit confirm that the imposition of technically or economically impracticable BMPs, whether to achieve a numeric effluent limit or otherwise, are requirements that go beyond what is required by Congress under the Clean Water Act, and are, in effect, terms that are not suitable for imposition on municipal dischargers.

In a letter from US EPA Headquarters, Benjamin H. Grumbles, to the Honorable Bart Doyle, dated August 22, 2003, US EPA provided similar “guidance on the definition of Maximum Extent Practicable (MEP),” where it stated as follows:

You also ask EPA to provide guidance on the definition of Maximum Extent Practicable (MEP) and to provide examples of

Ivar Ridgeway
July 20, 2012
Page 39

its practical application. Congress established MEP but did not provide language defining this standard. EPA envisions MEP as an iterative process that considers such factors as conditions and beneficial uses of receiving wearers, MS4 size, climate, implementation schedules, current ability to finance the program, hydrology, geology, and capacity to perform operation and maintenance. EPA understands the importance of providing assistance to help communities implement MEP. We are looking at the information gathered from evaluating many MS4 permits and programs. We hope to use this to provide examples of good storm water programs.

(Exhibit "20" hereto, p. 2.) US EPA has thus similarly confirmed that "MEP" is an iterative process that requires a consideration of various factors, including the practical conditions involved with compliance, as well as a City's ability to pay for, *i.e.*, "finance," the requirement.

In a June 2006 report prepared by the Expert Storm Water Quality Numeric Effluent limits Panel, a panel commissioned by the State Water Board, and entitled, "*Storm Water Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial and Construction Activities*" (Exhibit "16" hereto), the Panel concluded, "*It is not feasible at this time to set enforcement numeric effluent criteria for municipal BMPs in particular for urban discharges.*" (*Id.* at p. 8.) Further, as explained below, in State Board Order after State Board Order, it has long since been the policy of the State of California that for municipal storm water, the emphasis must be "*on BMPs in lieu of numeric effluent limitations.*" (Exhibit "14," State Board Order No. 2000-11, p.3; *also see* State Board Order No. 2001-15, p. 8 [*While we continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely*

Ivar Ridgeway
July 20, 2012
Page 39

its practical application. Congress established MEP but did not provide language defining this standard. **EPA envisions MEP as an iterative process that considers such factors as conditions and beneficial uses of receiving wearers, MS4 size, climate, implementation schedules, current ability to finance the program, hydrology, geology, and capacity to perform operation and maintenance.** EPA understands the importance of providing assistance to help communities implement MEP. We are looking at the information gathered from evaluating many MS4 permits and programs. We hope to use this to provide examples of good storm water programs.

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Ivar Ridgeway
July 20, 2012
Page 40

*improvements of BMPs, is appropriate.”]; Exhibit “15,” State Board Order No. 2006-12, p. 17 [“Federal regulations do not require numeric effluent limits for discharges of storm water.”]; and Exhibit “21”, November 22, 2002 US EPA Memorandum entitled “*Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources as NPDES Permit Requirements based on those WLAs,*” p. 4 [“*EPA’s policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water dischargers. ... Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs and that numeric limits will be used only in rare instances.*].)*

The ultimate outcome of imposing numeric effluent limits on municipalities will not be to improve water quality, but instead to increase litigation and attorneys fees in fighting enforcement actions and citizen suits (*see, e.g., NRDC v. County of Los Angeles, supra*, 673 F.3d 880), and, as well, will subject municipalities to unnecessary penalty claims, including mandatory minimum penalties. (*See Proposed Permit, p. 43-44, citing CWC § 13385.*) The Cities respectfully request that the Proposed Permit be revised to recognize the technical and economic realities of attempting to reduce the discharge of pollutants in urban runoff, and that the numeric WQBELs and receiving water limits specifically be revised to allow for an MEP-BMP deemed compliance approach. In particular, the Cities request that this deemed complaint approach be incorporated into both Part V.A of the Proposed Permit, as a part of the

Ivar Ridgeway
July 20, 2012
Page 41

iterative/adaptive management process, and into Part VI.E of the Permit as deemed compliance with the WLAs from a TMDL, as well as deemed compliance with any applicable action level.

In sum, in connection with Part V.A and Part VI.E (incorporating the various numeric WLAs in the TMDLs as numeric WQBEL and/or receiving water limits), the Permit should be revised to make clear that so long as the Permittees are implementing MEP compliant BMPs in good faith and in accordance with the iterative/adaptive management process, that they shall be deemed to be in compliance with such Permit terms. It has long been recognized by the State Board, as well as the courts and US EPA, that the use of MEP compliant BMPs is, in fact, the only means by which municipalities have to comply with MS4 permit terms. The Cities, therefore, respectfully request that this long-recognized means of compliance be incorporated into the Permit, and that the Permittees be deemed in compliance with all such requirements so long as they are acting in good faith and implementing MEP complaint BMPs.

In a proposal put forth by the California Stormwater Quality Association (“CASQA”), CASQA proposed adding language to the receiving water limits section consistent with the above referenced deemed compliance approach. The Cities believe CASQA’s proposal is a step in the right direction in attempting to developing a deemed compliance approach, but further believe that any such MEP BMP deemed compliance approach must equally extend to WLAs from TMDLs to be incorporated into the Permit, and also believe that CASQA’s language should be expanded to make clear that good faith compliance with the iterative/adaptive management

Ivar Ridgeway
July 20, 2012
Page 42

process is, in fact, compliance with all applicable receiving water limits and WQBELs or other numeric effluent limits, including “action levels.”

E. Requiring Strict Compliance With Numeric Limits In A Municipal NPDES Permit In Most Cases Is Requiring Compliance With Terms That Are Impossible To Achieve.

Several of the TMDLs incorporated into the Permit in the form of interim and/or final numeric limits, including those interim numeric limits that, in theory, can be complied with through the submission of Watershed Management Plans if “reasonable assurances” can be provided, are not possible to be complied with, and thus, are not appropriate for inclusion in the Proposed Permit.

Specifically, the various numeric limits imposed as a result of the following TMDLs are unobtainable: (1) the Bacteria TMDL for the Los Angeles River (*see Exhibit “22”* hereto, which are comments and documents submitted in opposition to its adoption, and showing the numerous deficiencies and problems with complying with such numeric limits); (2) the US EPA adopted Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL (*see Exhibit “23”*, which are comments and documents submitted in opposition to its adoption and showing deficiencies and the problems with complying with this TMDL); (3) the Dominguez Channel and Greater Los Angeles Harbor and Long Beach Harbor Waters Toxic Pollutants TMDL (*see Exhibit “24”*, which are comments and documents submitted in opposition to its adoption and the problems with complying with the numeric limits therein); (4) the Los Angeles River Metals TMDL (*see Exhibit “25”*, which are the comments and documents submitted in opposition to its

Ivar Ridgeway
July 20, 2012
Page 43

adoption and the problems with complying with the numeric limits therein); (5) the Los Cerritos Channel Metals TMDL (*see* Exhibit “26” which are the comments and documents submitted in opposition to its adoption and the problems with complying with the numeric limits therein); and (6) the Los Angeles River Trash TMDL (*see* Exhibit “27” which are the comments and documents submitted in opposition to its adoption and the problems with complying with the numeric limits therein).

Nor is strict compliance with the numeric receiving water limits and, in effect, the water quality standards that do not have a TMDL associated with them, possible to achieve for the same reasons the TMDL-numeric limits are unachievable. As explained in the various comments submitted in connection with each of these TMDLs, meeting many of the interim or any of the final numeric WLAs from these TMDLs, if imposed as suggested with the existing language in the Proposed Permit, as numeric WQBELs, is simply not possible.

As a matter of law, the Clean Water Act does not require permittees to achieve the impossible. In *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523 (11th Cir.) *cert. den.*, 519 U.S. 993 (1996), the plaintiff sued JMS Development Corporation (“JMS”) for failing to obtain a storm water permit that would authorize the discharge of storm water from its construction project. The plaintiff argued JMS had no authority to discharge any quantity or type of storm water from the project, i.e. a “zero discharge standard,” until JMS had first obtained an NPDES permit. (*Id.* at 1527.) JMS did not dispute that storm water was being discharged from its property and that it had not obtained an NPDES permit, but claimed it was not in violation of the Clean Water Act

Ivar Ridgeway
July 20, 2012
Page 44

(even though the Act required the permit) because the Georgia Environmental Protection Division, the agency responsible for issuing the permit, was not yet prepared to issue such permits. As a result, it was impossible for JMS to comply. (*Id.*)

The Eleventh Circuit Court of Appeal held that the CWA does not require a permittee to achieve the impossible, finding that “Congress is presumed not to have intended an absurd (impossible) result.” (*Id.* at 1529.) The Court then found that:

In this case, once JMS began the development, compliance with the zero discharge standard would have been impossible. Congress could not have intended a strict application of the zero discharge standard in section 1311(a) when compliance is factually impossible. The evidence was uncontroverted that whenever it rained in Gwinnett County some discharge was going to occur; nothing JMS could do would prevent all rain water discharge.

(*Id.* at 1530.) The Court concluded, “*Lex non cogit ad impossibilia*: The law does not compel the doing of impossibilities.” (*Id.*) The same rule applies here.

The Clean Water Act does not require Municipal Permittees to do the impossible and comply with unachievable numeric limits. Because Municipal Permittees are involuntary permittees, that is, because they have no choice but to obtain a municipal storm water permit, the Permit, as a matter of law, cannot impose terms that are unobtainable. (*Id.*)

In this case, as reflected in the various comments submitted in connection with each of the then-proposed TMDLs, strictly complying with the various waste load allocations set forth in the TMDLs, and with the other numeric receiving water limits is not achievable by the

Ivar Ridgeway
July 20, 2012
Page 45

Permittees, given the variability of the potential sources of pollutants in urban runoff, as well as the unpredictability of the climate in Southern California. In fact, as discussed above in *Divers*, *supra*, 145 Cal.App.4th 246: “In regulating storm water permits the EPA has repeatedly expressed the preference for doing so by way of BMPs, rather than by way of imposing either technology-based or water quality-based numeric limitations.” (*Id.* at 256.) According to the *Divers* Court: “EPA has repeatedly noted, storm water consists of a variable stew of pollutants, including toxic pollutants, from a variety of sources which impact the receiving body on a basis which is only as predictable as the weather.” (*Id.* at 258.)

Similarly, in *BIA v. State Board*, *supra*, 124 Cal.App.4th 866, 889-90, also discussed above, after having recognized the “practical realities of municipal storm sewer regulation,” and the “physical differences between municipal storm water runoff and other pollutant discharges,” and finding that the maximum extent practical approach was a “workable enforcement mechanism” (*id.* at 873, 884), the Court there concluded that the MEP standard was purposefully intended to be highly flexible concept that balances numerous factors including “technical feasibility, costs, public acceptance, regulatory compliance and effectiveness.” (*Id.* at 889-90.)

For many of the numeric limits, the “technical” and “economic” feasibility to comply simply do not exist, and imposing such requirements that go beyond “the limits of practicability” (*Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1162), is nothing more than an attempt to impose an impossible standard on municipalities that cannot withstand legal scrutiny. Accordingly, the imposition of the various numeric limits as strict water quality-based effluent

Ivar Ridgeway
July 20, 2012
Page 46

limits and/or receiving water limits is not only an attempt to impose an obligation that goes beyond the requirements of federal law, but equally important, represents an attempt to impose provisions that go beyond what is “practicable,” and in this case, beyond what is “feasible.” Because the law does not compel doing the impossible, the numeric limits to be incorporated into the Proposed Permit must be stricken.

F. The “Discharge Prohibition” Terms Of Part III.A Of The Proposed Permit, To The Extent They Attempt To Impose A Higher Standard Than The MEP Standard On The Permittees, Are Inconsistent With Federal Law And Contrary To State Law.

1. The MEP Standard Applies To Discharges Of Both “Non-Stormwater” And “Stormwater” From The MS4.

Under Part III of the Permit, specifically Section A of Part III, the Proposed Permit attempts to require that each Permittee “prohibit non-stormwater discharges *through the MS4 to receiving waters* except where such discharges are either: . . .” This language, combined with the findings in the Proposed Permit (Proposed Permit, p. 17) appear to be designed to provide the Regional Board with yet additional authority to attempt to require the imposition of numeric limits on the Permittees, irrespective of the maximum extent practicable standard. Yet, the suggestion that the Clean Water Act authorizes the Regional Board to impose a standard beyond the MEP standard on so-called “non-stormwater” discharges, or otherwise, is expressly refuted by the plain language of the Clean Water Act. Similarly, it is not supported by the requirements of the Porter-Cologne Act.

Ivar Ridgeway
July 20, 2012
Page 47

The CWA expressly applies the MEP standard to all “pollutants” discharged “from” the MS4, whether the discharges are classified as “non-stormwater” or “stormwater.” Although “non-stormwater” is required to be “effectively prohibited” from entering “*into*” the MS4, the CWA does not treat discharges “*from*” the MS4 any differently if the “pollutants” in issue arose as a result of a “storm water” versus a “non-stormwater” discharge. (33 U.S.C. § 1342(p)(3)(B)(iii).) Instead, under the CWA, regardless of the nature of the discharge, *i.e.*, be it “storm water” or alleged “non-stormwater,” the MEP standard continues to apply. (*Id.*)

The language in the CWA requires municipalities to “require controls to reduce the discharge of *pollutants* to the maximum extent practicable.” (*Id.*) The CWA then applies the MEP standard to the “discharge of pollutants” from the MS4, not to the discharge of “stormwater” or “non-stormwater” from the MS4. As such, the Regional Board’s attempt to “prohibit non-stormwater discharges through the MS4 to receiving waters” rather than into the “storm sewer,” (33 USC § 1342(p)(3)(b)(ii)), exceeds federal law and is not authorized under State law.

Section 1342(p)(3)(B) of the CWA entitled “Municipal Discharge” provides, in its entirety, as follows:

Permits for discharges **from** municipal storm sewers –

- (i) may be issued on a system– or jurisdiction– wide basis;

Ivar Ridgeway
July 20, 2012
Page 48

- (ii) shall include a requirement to effectively prohibit **non-stormwater** discharges **into** the storm sewers; and
- (iii) shall require controls **to reduce the discharge of pollutants to the maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 U.S.C. § 1342(p)(3)(B), emphasis added.)

This language in the CWA has consistently been interpreted as requiring an application of the MEP standard to municipal discharges, rather than an application of a standard requiring strict compliance with numeric limits. Specifically, federal law only requires strict compliance with numeric effluent limits by industrial dischargers, but not by municipal dischargers. As the Ninth Circuit in *Defenders, supra*, 191 F.3d 1159 found, “Congress required municipal storm-sewer dischargers ‘to reduce the discharge of pollutants to the maximum extent practicable’ finding that the Clean Water Act was “*not merely silent*” regarding requiring “municipal” dischargers to strictly comply with numeric limits, but in fact found that the requirement for traditional industrial waste dischargers to strictly comply with the limits was “replaced” with an alternative requirement, i.e., “that *municipal* storm-sewer dischargers ‘reduce the discharge *of pollutants* to the maximum extent practicable . . . *in such circumstances, the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).* (*Id.* at 1165; emphasis added.)

Ivar Ridgeway
July 20, 2012
Page 49

Similarly, in *BIA, supra*, 124 Cal.App.4th 866, there as well the Appellate Court, relying upon the Ninth Circuit's holding in *Defenders*, agreed that "with respect to *municipal* stormwater discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose 'controls to reduce the discharger *of pollutants* to the maximum extent practicable.'" (*Id.* at 874, emphasis added.) The Court of Appeal in the *BIA* Case explained the reasoning for Congress' different treatment of Stormwater dischargers versus industrial waste dischargers when it stated that:

Congress added the NPDES storm sewer requirements to strengthen the Clean Water Act and making its mandate correspond to the practical realities of municipal storm sewer regulation. As numerous commentators pointed out, although Congress was reacting to the **physical differences between municipal storm water runoff and other pollutant discharges** that made the 1972 legislation's blanket effluent limitations approach **impractical and administratively burdensome**, the primary points of the legislation was to address these administrative problems while giving the administrative bodies the tools to meet the fundamental goals of the Clean Water Act in the context of stormwater pollution. (*Id.* at 884, emphasis added.)

The Proposed Permit appears to attempt to "back door" numeric limits on to the municipalities by the altered "Discharge Prohibition" language, and on its face goes beyond what was required by Congress with the 1987 Amendments to the CWA.

In State Board Order No. 91-04, the State Board addressed the propriety of the 1990 Municipal NPDES Permit for Los Angeles County, and particularly whether such permit, in

Ivar Ridgeway
July 20, 2012
Page 50

order to be consistent with applicable State and federal law, was required to have included “numeric effluent limitations.” In addition to the State Board’s interchangeable use of the terms “storm water” and “urban runoff” when discussing the applicable standard to be applied under the CWA (*see* discussion below), the State Board confirmed that the MEP standard applies to the “*discharge of pollutants*” from the MS4, and made no mention of the need to apply a different standard if the “*discharge of pollutants*” arose from alleged “non-stormwater” rather than “storm water.” To the contrary, the State Board recognized the MEP standard applied to “pollutants in runoff,” irrespective of the source of the pollutants, finding as follows:

We find here also that the approach of the Regional Board, requiring the dischargers to implement **a program of best management practices** which will reduce **pollutants in runoff**, prohibiting non-stormwater discharges, is appropriate and proper. **We base our conclusion on the difficulty of establishing numeric effluent limitations which have a rational basis, the lack of technology available to treat storm water discharges at the end of the pipe, the huge expense such treatment would entail, and the level of pollutant reduction which we anticipate from the Regional Board’s regulatory program.** (Exhibit “10,” State Board Order No. 91-04, p. 16-17, *emph. added.*)

This State Board Order, and others as discussed above, all show that although there are two requirements imposed upon municipalities under the CWA, one requiring that municipalities effectively prohibit “non-stormwater” “into” the MS4, and a second requiring municipalities to “reduce the discharge of pollutants to the maximum extent practicable,” that the MEP standard applies to “*pollutants in runoff*” coming out of the MS4 system, regardless of whether such discharges are stormwater or non-stormwater. The only difference in the requirements to be

Ivar Ridgeway
July 20, 2012
Page 51

imposed upon the municipalities between “storm water” and “non-stormwater,” involves the need for municipalities to adopt ordinances in order to “effectively prohibit non-stormwater discharges into the” MS4.

2. The Definition Of “Stormwater” Includes “Dry Weather” Runoff.

The Proposed Permit also appears to improperly seek to classify all dry-weather runoff as “non-storm water,” and, therefore, to potentially impose a more stringent standard on Permittees for such dischargers, other than the MEP standard. Yet, the assertion that “dry weather discharges” do not also fall under the classification of “storm water,” is inaccurate and directly controverted by the federal regulations. In fact, that the definition of “stormwater” includes “urban runoff,” *i.e.*, dry-weather discharges, as well as precipitation events, has been admitted to by both the State Board and this Regional Board in the case of *City of Arcadia v. State Board* case, OCSC Case No. 06CC02974, Fourth Appellate District Case No. G041545 (hereafter the “*Arcadia Case*”), as well as by the NRDC, the Santa Monica Baykeeper and Heal the Bay. As such, any attempt to redefine the term “stormwater” to exclude “dry weather,” is contrary to law and should be rejected.

First, it is clear from the plain language of the regulations that the term “stormwater” includes all forms of “urban runoff” in addition to precipitation events. Specifically, section 122.26(b)(13) reads as follows: “*Storm water* means storm water runoff, snow melt runoff, *and surface runoff and drainage.*” (40 C.F.R. § 122.26(b)(13); italics in original, bolding and underlining added.) This definition starts with the inclusion of “storm water” and

Ivar Ridgeway
July 20, 2012
Page 52

“snow melt runoff,” and is then further expanded to include not only “storm water” and “snow melt runoff,” but also “surface runoff” and “drainage.”

The Regional Board’s proposed interpretation of this definition is an attempt to read the terms “surface runoff” and “drainage” out of the regulation. Such an interpretation is contrary to the plain language of the regulation itself, and is contrary to law. (*See e.g., Astoria Federal Savings and Loan Ass’n v. Solimino* (1991) 501 U.S. 104, 112 [“[W]e construe statutes, where possible, *so as to avoid rendering superfluous any parts thereof.*”]; *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55 [“We ordinarily reject interpretations that render particular terms of a statute as mere surplusage, *instead giving every word some significance.*”]; *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 92 [“In construing the words of a statute . . . an interpretation *which would render terms surplusage should be avoided*, and every word should be given some significance, *leaving no part useless or devoid of meaning.*”]; *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1022 [“*We are required to avoid an interpretation which renders any language of the regulation mere surplusage.*”]; and *Hart v. McLucas* (9th Cir. 1979) 535 F.2d 516, 519 [“*[I]n the construction of administrative regulations, as well as statutes, it is presumed that every phrase serves a legitimate purpose and, therefore, constructions which render regulatory provisions superfluous are to be avoided.*”].)

Second, beyond the plain language of the federal regulation, prior orders of the State Board confirm that the term “urban runoff” is included within the definition of “storm water.” For example, in State Board Order No. 2001-15, the State Board regularly interchanges the terms

Ivar Ridgeway
July 20, 2012
Page 53

“urban runoff” with “storm water,” and discusses the “controls” to be imposed under the Clean Water Act as applying equally to both. In discussing the propriety of requiring strict compliance with water quality standards, and the applicability of the MEP standard in Order No. 2001-15, the State Board asserted as follows:

Urban runoff is causing and contributing to impacts on receiving waters throughout the state and impairing their beneficial uses. In order to protect beneficial uses and to achieve compliance with water quality objectives in our streams, rivers, lakes, and the ocean, we must look to controls on **urban runoff**. It is not enough simply to apply the technology-based standards of controlling discharges of pollutants to the MEP; where **urban runoff** is causing or contributing to exceedances of water quality standards, it is appropriate to require improvements to BMPs that address those exceedances.

While we will continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvements of BMPs, is appropriate. **We will generally not require “strict compliance” with water quality standards through numeric effluent limits and we will continue to follow a iterative approach, which seeks compliance over time.** The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced through large and medium municipal storm sewer systems. (See Exhibit “7”, Order 2001-15, p. 7-8; emphasis added.)

Moreover, at the urging of the petitioner in Order No. 2001-15, the State Board went so far as to modify the “Discharge Prohibition A.2” language, which was challenged by the Building Industry Association of San Diego County (“BIA”), because such Discharge Prohibition was not subject to the iterative process. The State Board found as follows in this

Ivar Ridgeway
July 20, 2012
Page 54

regard: “The difficulty with this language, however, is that it is not modified by the iterative process. To clarify that this prohibition also must be complied with through the iterative process, Receiving Water Limitation C.2 must state that it is also applicable to Discharge Prohibition A.2. . . . Language clarifying that the iterative approach applies to that prohibition is also necessary.” (State Board Order No. 2001-15, p. 9.)

The State Board further required that the Municipal NPDES permit challenged in that case be modified because the permit language was overly broad, as it sought to apply the MEP standard not only to discharges “from” MS4s, but also to discharges “into” MS4s, with the BIA claiming that it was inappropriate to require the treatment and control of discharges “prior to entry *into* the MS4,” and with the State Board agreeing that such a regulation of discharges “*into*” the MS4 was inappropriate. [*Id* at 9 [“We find that the permit language is overly broad because it applies the MEP standard not only to discharges ‘from’ MS4s, but also to discharges ‘into’ MS4s.”].)

In State Board Order No. 91-04, the State Board specifically relied upon EPA’s Stormwater Regulations, to find that: “Storm water discharges, by ultimately flowing through a point source to receiving waters, are by nature more akin to non-point sources as they flow from diffuse sources over land surfaces.” (State Board Order No. 91-04, p. 13-14.) The State Board then relied upon EPA’s Preamble to said Stormwater Regulations, and quoted the following from the Regulation:

Ivar Ridgeway
July 20, 2012
Page 55

For the purpose of [national assessments of water quality], **urban runoff** was considered to be a diffuse source for non-point source pollution. From a legal standpoint, however, most **urban runoff** is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the [Clean Water Act]. 55 Fed.Reg. 47991. (State Board Order No. 91-04, p. 14; emphasis added.)

The State Board went on to conclude that the lack of any numeric objectives or numeric effluent limits in the challenged permit: “will not in any way diminish the permit’s enforceability or its ability to reduce *pollutants in storm water discharges* substantially. . . . In addition, the [Basin] Plan endorses the application of ‘best management practices’ rather than numeric limitations as a means of reducing the level of *pollutants in storm water discharges*.” (*Id* at 14, emphasis added.) (*Also see Exhibit “16”*, Storm Water Quality Panel Recommendations to the California State Water Resources Control Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*, June 19, 2008, p. 1 [“MS4 permits require that the discharge of pollutants be reduced to the maximum extent practicable (MEP)”], and p. 8 [“It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs *and in particular urban dischargers*.”]; *Exhibit “13”*, State Board Order No. 98-01, p. 12 [“*Storm water permits* must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality-based effluent limits.”]; and *Exhibit “14”*, State Board Order No. 2001-11, p. 3 [“In prior Orders this Board has explained the need for the *municipal stormwater programs* and the emphasis on BMPs in lieu of numeric effluent limitations.”].)

Ivar Ridgeway
July 20, 2012
Page 56

It is further important to note that this interpretation of the term “stormwater” as including “urban runoff,” has been agreed to by both the Regional and State Boards, as well as by the NRDC, Heal the Bay, and the Santa Monica Baykeeper. Specifically, in the State and Regional Boards’ Opening Appellate Brief in the *Arcadia* Case, they agreed that the term “stormwater” is to include “urban runoff,” where they stated as follows:

“Storm water,” when discharged from a conveyance or pipe (such as a sewer system) is a “point source” discharge, but stormwater emanates from diffuse sources, including surface run-off following rain events (hence “storm water”) and urban run-off. (See Exhibit “28” hereto, which is a true and correct copy of the cited portion from the Boards’ Opening Appellate Brief in the *Arcadia* Case; emphasis added.)

This definition of the term “storm water” as including “urban runoff,” was similarly accepted by the NRDC, the Santa Monica Baykeeper, and Heal the Bay (collectively, “Intervenors”) in the *Arcadia* Case, where they stated in their briefing as follows:

For ease of reference, throughout this brief, the terms “urban runoff” and “stormwater” are used interchangeably to refer generally to the discharges from the municipal Dischargers’ storm sewer systems. The definition of “stormwater” includes “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 C.F.R. § 122.26(b)(13).) (See Exhibit “29,” hereto, which is a true and correct copy of the cited portion of the Intervenors’ Opening Appellate Brief in the *Arcadia* Case; emphasis added.)

In sum, in light of the plain language of the federal regulation defining the term “storm water” to include “urban runoff,” *i.e.*, “surface runoff” and “drainage” in addition to “storm water” and “snow melt,” and given the admissions by the State and Regional Boards and the

Ivar Ridgeway
July 20, 2012
Page 57

Intervener Environmental Groups in the *Acadia* Case, it is clear that the term “storm water” as defined in the federal regulations, includes “surface runoff and drainage,” *i.e.*, “dry weather” runoff. Accordingly, there is no basis to treat “dry-weather runoff” any more stringent under the CWA than wet weather, and as such, there is no basis to apply a different standard than the MEP standard to dry weather.

G. The Proposed Permit Terms Requiring Compliance With Numeric Limits, Irrespective Of The MEP Standard, Along With The New “Discharge Prohibitions” Terms, Were Not Adopted In Accordance With The Requirements Of CWC §§ 13000, 13263 And 13241.

The receiving water limits in Part V of the Proposed Permit, the incorporation of the WLAs from the various TMDLs into Part VI.E of the Proposed Permit as numeric WQBELs, and the “Discharge Prohibitions” language in Part III.A of the Proposed Permit, were not developed in accordance with the requirements of State law. With each of these Permit terms, the Regional Board is seeking (at different points in time) to require strict compliance with numeric limits, irrespective of whether such terms will result in the need to develop and implement “impracticable” BMPs that are not technically and/or economically feasible or cost effective. By imposing requirements that go beyond the MEP standard as defined in the Proposed Permit itself, *i.e.*, by adopting Permit terms that will result in Cities having to implement “impracticable” BMPs to comply with such terms, the Regional Board is, by definition, seeking to impose Permit terms that go beyond the requirements of federal law, and similarly, that are contrary to CWC sections 13241, 13263 and 13000.

Ivar Ridgeway
July 20, 2012
Page 58

As discussed above, federal law only require that municipal storm sewer dischargers “reduce the discharge of pollutants to the maximum extent practicable,” and specifically does not require that such dischargers comply with numeric effluent limits. (*See, e.g. Defenders, supra*, 191 F.3d 1159, 1165; *also see Divers’ Environmental, supra*, 145 Cal.App.4th 246, 256, where the court found that: ***“In regulating stormwater permits the EPA has repeatedly expressed a preference for doing so by the way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations.”***) As such, any attempt to impose numeric limitations as proposed in the Proposed Permit, requires compliance with the requirements of the California Porter-Cologne Act, namely in this instance, CWC sections 13263, 13241 and 13000.

It is evident from the plain language of the definition of MEP, that the Regional Board’s desire to force Permittees to attempt to comply with numeric limits is nothing more than an attempt to impose requirements on the Permittee that are not technically or economically feasible, or otherwise cost effective, and thus, that are not “reasonably achievable” or otherwise in compliance with the requirements of State law. In fact, the “maximum extent practicable” standard, as defined in the Proposed Permit and in the Chief Counsel Memo, requires the imposition of “practicable” BMPs only, considering the technical feasibility and costs of doing so, including whether the costs “of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved.” (Proposed Permit, Appendix A, p. A-5-A-6.)

Ivar Ridgeway
July 20, 2012
Page 59

Similarly, as discussed below, CWC sections 13241, 13263 and 13000 all directly or indirectly require a consideration of “economics,” as well as whether the terms in question are “reasonable achievable,” including a balancing of the benefit of the requirement, e.g., “*the total values involved, beneficial and detrimental, economic and social, tangible and intangible*” (CWC § 13000), the “*water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area*” (CWC § 13241), and the need to “take into consideration the beneficial uses to be protected” and the “*water quality objectives reasonably required for that purpose*” (CWC § 13263(a).)

Accordingly, the Proposed Permit terms that go beyond a maximum “practicability” standard will, by definition under the terms of the Porter-Cologne Act, go beyond what the Regional Board has the authority to impose under California law. In essence, as a matter of law, permit terms that go beyond “maximum practicability” are terms that go beyond the balancing, reasonableness and economic considerations and other considerations required before any such permit terms can lawfully be imposed under California law. Here, because, as the courts have found, the imposition of numeric limits in a municipal storm water permit go beyond what is required under federal law, *i.e.*, go beyond the MEP standard as discussed above, by definition they also go beyond the Regional Board’s authority under State law. (See CWC §§ 13241, 13263 and 13000.)

Under the California Supreme Court’s holding in *Burbank v. State Board* (2005) 35 Cal.4th 613 (“*Burbank*”), a regional board must consider the factors set forth in sections 13263,

Ivar Ridgeway
July 20, 2012
Page 60

13241 and 13000 when adopting an NPDES Permit, unless consideration of those factors “would justify including restrictions that do not comply with federal law.” (*Id.* at 627.) As stated by the *Burbank* Court, “**Section 13263 directs Regional Boards, when issuing waste discharge requirements, to take into account various factors including those set forth in Section 13241.**” (*Id.* at 625, emphasis added.) Specifically, the *Burbank* Court held that to the extent the NPDES Permit provisions in that case were not compelled by federal law, the Boards were required to consider their “economic” impacts on the dischargers themselves, with the Court finding that such requirement means that the Water Boards must analyze the “**discharger’s cost of compliance.**” (*Id.* at 618.)

The Court in *Burbank* thus interpreted the need to consider “economics” as requiring a consideration of the “cost of compliance” on the cities involved in that case. (*Id.* at 625 [“The plain language of *Sections 13263 and 13241* indicates the Legislature’s intent in 1969, when these statutes were enacted, that a regional board **consider the costs of compliance when setting effluent limitations in a waste water discharge permit.**”].) The Court further recognized that the goals of the Porter-Cologne Act as provided for under Section 13000 are to “attain the highest water quality **which is reasonable**, considering all demands being made and to be made on those waters **and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.**” (*Id.* at 618, citing § 13000.) Moreover, under section 13263(a), waste discharge requirements developed by the Regional Board: “shall implement any relevant water quality control plans that have been adopted, and take into consideration the beneficial uses to be

Ivar Ridgeway
July 20, 2012
Page 61

protected, the water quality objectives *reasonably required for that purpose*, other waste discharges, the need to prevent nuisance, *and the provisions of Section 13241.*” (§ 13263(a).)

In addition, section 13241 compels the Boards to consider the following factors when developing NPDES Permit terms:

- (a) **Past, present, and probable future beneficial uses of water.**
- (b) **Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.**
- (c) **Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.**
- (d) **Economic considerations.**
- (e) **The need for developing housing in the region.**
- (f) **The need to develop and use recycled water.**

(§ 13241.) In a concurring opinion in the *Burbank* case, Justice Brown made several significant comments regarding the importance of considering “economics” in particular, and the Section 13241 factors in general, when adopting an NPDES Permit that includes terms not required by federal law:

Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board) – the body responsible to enforce the statutory framework – failed to comply with its statutory mandate.

Ivar Ridgeway
July 20, 2012
Page 62

For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirements set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of “gotcha” by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so. (*Id* at 632, J. Brown, concurring; emphasis added.)

Justice Brown went on to find that:

Accordingly, the Board has failed its duty to allow public discussion – including economic considerations – at the required intervals when making its determination of proper water quality standards. What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions. (*Id* at 632-33.)

Accordingly, before adopting any permit terms that impose requirements that exceed those set forth under federal law, specifically including a municipal NPDES Permit that seeks to require compliance with numeric limits (*i.e.*, that go beyond the MEP standard provided under federal law), the Regional Board is required to comply with sections 13263, 13241 and 13000 of the CWC. However, in reviewing the findings in the Proposed Permit, as well as the Draft Fact Sheet, these requirements of the Porter-Cologne Act have clearly not been complied with.

Ivar Ridgeway
July 20, 2012
Page 63

In fact, there do not appear to be any findings, nor any evidence referenced in the Proposed Permit or in the Draft Fact Sheet, to show that the policy considerations set forth under section 13000 have been met, that the “reasonableness” considerations under section 13263 have been considered, nor that the analysis set forth under section 13241 had been conducted, specifically in connection with numeric WQBELs, the numeric receiving water limits or the new Discharge Prohibition requirements. In short, there has been no legitimate consideration of whether such Proposed Permit terms “could reasonably be achieved,” in light of the “environmental characteristics” of the various water bodies in issue, their “economic” impacts on the dischargers, the impacts on “housing within the region,” or the “past, present, and probable future uses of the water” (*e.g.*, such as the bacteria TMDL objective of limiting bacteria from entering steep, concrete-lined flood control channels that are often fenced and posted, so as, to allow for swimming and other human recreation in there flood-control channels).

The failure of the Regional Board to include a sincere discussion of the 13241/13263/13000 factors on pages F-130 – F-146 of the Draft Fact Sheet, and to analyze the ability of the Permittees to technically, economically and otherwise “reasonably” comply with numeric limits, or even to discuss the Numeric Limits Panel’s Report, long-established State Board policy or the reasoning of Congress under the Clean Water Act in limiting the requirements to be imposed on municipal permittees to the MEP standard, shows the Board’s inability to adopt such terms in accordance with State law.

Ivar Ridgeway
July 20, 2012
Page 64

Instead of addressing the real issues and including a legitimate discussion of the 13000/13263/13241 factors, incredibly the Fact Sheet seeks to rely on cost estimates from the 2001 Permit that do not reflect compliance with the numeric WQBELs and receiving water limits sought to be imposed under the new Proposed Permit terms. Nor is there a discussion of these factors in relation to the Discharge Prohibition language under Part III.A. As the evidence does not exist to support the necessary Findings for Permit terms that go beyond the MEP standard, all such provisions requiring compliance with numeric limits are contrary to law and are arbitrary and capricious, and their inclusion in the Proposed Permit would constitute an abuse of discretion by the Regional Board if adopted.

In a study prepared back in 2002, by the University of Southern California Study, entitled *“An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County,”* concluded that the cost of treating urban runoff in Los Angeles County could reach as high as \$283.9 billion over 20 years. (Exhibit ”30,”; *see also* Exhibit ”31,” “Financial and Economic Impacts of Storm Water Treatment Los Angeles County NPDES Permit Area” presented to California Department of Transportation Environmental Program, Report I.D. #CTSWRT-98-72, November, 1998, by Stanley R. Hoffman Associates; Exhibit ”32,” “Cost of Storm Water Treatment for the Los Angeles NPDES Permit Area,” June 1998, by Brown & Caldwell, prepared for the California Department of Transportation [giving “conservatively low” estimates of the costs of treating Los Angeles Area Storm Water of \$33-73 billion in capital costs, depending upon the level of treatment, with an additional \$68-\$199 million per year in operating

Ivar Ridgeway
July 20, 2012
Page 65

and maintenance costs]; Exhibit "33," "Cost of Storm Water Treatment for California Urbanized Areas," October, 1998, prepared for California Department of Transportation, by Brown & Caldwell [concluding that "Statewide stormwater collection and treatment costs range from \$70.5 billion for Level 1 to \$113.7 billion for Level 3. Annual operations and maintenance costs range from \$145.2 million/year for Level 1 to \$423.9 million/year for Level 3."]; and Exhibit "34," a copy of a Report entitled "*NPDES Stormwater Costs Survey*" by Brian K. Currier, Joseph M. Jones and Glen L. Moelle, California University, Sacramento dated January, 2005 along with Appendix H included therewith entitled "*Alternative Approaches to Stormwater Control*" prepared by the Center for Sustainable Cities University of Southern California.)

In a recent Economic Forecast prepared by the California State University, Long Beach, for the Sixteenth Annual Regional Conference for Southern California and its Counties, May 2010 (Exhibit "35," "Economic Forecast"), a grim picture was painted of the present state of the economy for local governments throughout the Region. According to this Economic Forecast:

Last year, the region's economy shed 460,000 jobs. This was on top of the 138,000 jobs lost in 2008, raising the cumulative two-year loss to almost 600,000 jobs. The region has not experienced such a devastating job loss since the early 1990's. Over a three year period, 1991-93, the region lost 470,000. At that time it was thought to be the most significant downturn in the Southern California regional economy since the Great Depression."

* * *

This recession is the longest and one of the steepest declines in the post World War II era. What made this recession different is that the economy had not faced a financial crises of such magnitude since the Great Depression. The housing bubble, subprime interest

Ivar Ridgeway
July 20, 2012
Page 66

loans, lax lending standards, and securitization of mortgages led to the near collapse of financial markets, crating the first ever downtown in the global economy in the modern era. . . . Unemployment surged as employers shed 4.7 million jobs in 2009. Bringing the total jobs lost since the onset of the recessing to 8.4 million.

(Exhibit "35," Economic Forecast, pp. 4 and 7; *also see* Exhibit "36," which includes a series of PowerPoint presentations presented at the Economic Forecast Conference on May 13, 2010, concerning the poor state of the national and regional economy.)

Furthermore, in a Report entitled "*A Guide to Consideration of Economics Under the California Porter-Cologne Act,*" by David Sunding and David Ziberman, University of California, Berkeley, March 31, 2005 (Exhibit "37,"), the authors reviewed the requirements of the Porter-Cologne Act regarding the need to consider "economics" and the other factors under section 13241, and concluded as follows:

While the requirement to consider economics under Porter-Cologne is absolute, the legislature and the courts have done little to particularize it. **This report is an attempt to fill the gap and provide the Board with guidance as to how economics can and should be considered as required by Porter-Cologne.** We write from our perspective as professional economists and academics who have engaged in water quality research and who have extensive experience with the application of economics to environmental regulation. (Exhibit "37," p. v.)

Although of little consolation, California is not alone in its difficulties in attempting to regulate urban runoff, as California's problems are consistent with similar problems occurring throughout the United States, as reflected in a detailed 500 plus page report prepared for US EPA in 2008 by the National Research Council ("NRC") of The National Academies entitled, *Urban*

Ivar Ridgeway
July 20, 2012
Page 67

Stormwater Management in the United States. (See Exhibit "38," and Exhibit "39," hereto.)

This 500 page Report was prepared at EPA's request to "review [EPA's] current permitting program for stormwater discharge under the Clean Water Act and provide suggestions for improvement." (Exhibit "38," p. vii.) EPA's desire for the Report was based upon the recognition that "*the current regulatory framework . . . was originally designed to address sewage and industrial wastes*" and "*has suffered from poor accountability and uncertainty about its effectiveness at improving water quality.*" (Exhibit "39," p. 1 (emphasis added).)

EPA's 2008 NRC Report expressly acknowledges that reducing Stormwater pollution has proven to be "notoriously difficult," with the NRC finding that the current approach to regulating Stormwater "*seems inadequate to overcome the unique challenges of stormwater.*" (Exhibit "38," p. 23.) The NRC went on to conclude that because of the differences between Stormwater and traditional discharges, the current regulatory approach is a "*poor fit.*" (*Id.* at 83.)

According to the NRC, compared with traditional effluent streams, "the uncertainties and variability surrounding both the nature of stormwater discharges and the capabilities of various pollution controls . . . make it much more difficult to set precise limits in advance for stormwater sources." (*Id.* at 84.) In sum, the NRC's research showed that "*the technical demands of the TMDL program make for a particularly bad fit with the technical impediments already present in monitoring and managing stormwater.*" (*Id.* at 51.)

In light of the above-referenced evidence, a fair consideration of the factors set forth under sections 13000, 13263 and 13241, including specifically the need for a showing that the

Ivar Ridgeway
July 20, 2012
Page 68

Proposed Permit terms, and specifically numeric limits, “could reasonably be achieved,” as well as the need to consider “economics,” and the need to consider all of the other factors in said sections, would result in the adoption of a different set of permit terms, and particularly terms that do not require compliance with numeric limits.

Instead, the Proposed Permit, rather than including numeric limits, should include language that finds that the Permittees are in compliance with the various TMDL WLAs and receiving water limits if they are implementing MEP compliant BMPs, and complying with the iterative process set forth under State Board Order No. 99-05. It is this iterative compliant MEP BMP process that has been outlined again and again by the State Board, and that has consistently been acknowledged as being the appropriate process by the Courts. If the Regional Board desires to go beyond this iterative MEP compliant BMP process, and require compliance with numeric limits, then it must comply with all of the requirements set forth in sections 13000, 13263 and 13241. It has not and in fact cannot do so with the Proposed Permit, and for this reason the Proposed Permit cannot lawfully be adopted at this time.

H. The Proposed Permit Monitoring, And Reporting Program Requirements, And Related And Similar Terms Throughout The Proposed Permit Were Not Developed In Accordance With Law, As The Regional Board Has Failed To Comply With Water Code Sections 13267, 13225 and 13165.

The Proposed Permit contains numerous requirements involving monitoring, investigation, studies and reporting, specifically including an extensive set of Monitoring and Reporting Program Requirements as referenced in Parts VI.B and VI.E.5. Under California law,

Ivar Ridgeway
July 20, 2012
Page 69

before any monitoring, reporting, investigation and study requirements may be imposed upon a permittee, a cost/benefit analysis must be conducted and no such requirements can be imposed unless the Board has first shown that the burden, including the costs of these requirements, “bear a reasonable relationship” to their need.

Section 13267, entitled “Investigation of Water Quality; Report; Inspection of Facilities,” provides in relevant part, as follows:

(a) A regional board, in establishing and reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this State . . . that could affect the quality of waters within its region shall furnish, under penalty of perjury, **technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.** In requiring those reports, the regional board **shall provide the person with a written explanation** with regard to the need for the reports, and **shall identify the evidence** that supports requiring that person to provide the reports.

(§ 13267, emphasis added.) In addition to section 13267, section 13225(c) mandates that the Regional Board similarly conduct a cost/benefit analysis if it requires *a local agency* to

Ivar Ridgeway
July 20, 2012
Page 70

investigate and report on technical factors involved with water quality. Section 13225(c) of the Water Code requires that each regional board, with respect to its region, shall:

(c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; **provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom.**

(§ 13225(c) (emphasis added); *see also* § 13165 [imposing this same requirement on the State Board where it requires a “local agency” to “investigate and report on any technical factors involved in water quality control; *provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom*”].)

Because the findings in the Proposed Permit did not reflect that a cost/benefit analysis as required by sections 13267, 13225 and 13165 was conducted, and specifically because the evidence does not support a determination that the burden, including the costs of all such monitoring, investigations, studying and reporting obligations bears a “reasonable relationship” to the need for this information, the Proposed Permit cannot be adopted in its present form.

I. The California Environmental Quality Act (“CEQA”) Preempts The Planning And Land Development Program Requirements Set Forth In The Proposed Permit.

Part VI.D.6 entitled “Planning and Land Development Program” contained on pages 66-83 of the Proposed Permit, sets forth a series of requirements on Permittees when reviewing,

Ivar Ridgeway
July 20, 2012
Page 71

approving and conditioning various New Development and Redevelopment projects within their respective jurisdictions. These provisions include, but are not limited to the following:

(1) the need to “minimize impacts of stormwater and urban runoff on the biological integrity of natural drainage systems and water bodies in accordance with requirements under CEQA.”

(2) the need to “minimize the on land developments by minimizing soil compaction during construction designing projects to minimize the imperious area footprint, and employing Low Impact Development (“LID”) design principle to mimic predevelopment water balance through infiltration, evapotranspiration, and rainfall harvest and use.”

(3) “Maintain existing riparian buffers and enhance riparian buffers when possible.”

(4) “Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs (including Source Control BMPs such as good housekeeping practices), LID Strategies, and Treatment Control BMPs.”

(5) “Properly select, design and maintain LID and Hydro modification Control BMPs to address pollutants that are likely to be generated, reduce changes to pre-development hydrology, assure long-term function, and avoid the breeding of vectors.”

Ivar Ridgeway
July 20, 2012
Page 72

(6) “Prioritize the selection of BMPs to remove storm water pollutants, reduce storm water runoff volume, and beneficially use storm water to support an integrated approach to protecting water quality and managing water resources in the following order of preference: (a) On-site infiltration, bioretention and/or rainfall harvest and use. (b) On-site biofiltration, off-site ground water replenishment, and/or off-site retrofit.”

(Proposed Permit, p. 66-67.) The requirements set forth in the Planning and Land Development provisions thus impose various numeric design criteria on New Development and Redevelopment projects to minimize the impervious surface area and control runoff from impervious surface through infiltration, bioretention and/or rainfall harvest and use. (Proposed Permit, (p. 69-70.) These requirements on New Development and Redevelopment projects generally include various storm water volume design requirements, a series of Low Impact Development requirements, and numerous hydromodifications requirements, all purportedly designed to reduce, to a level of insignificance, the adverse environmental impacts on water quality from any given “New Development” or “Redevelopment” project.

In effect, the provisions of the Proposed Permit involving the Planning and Land Development Program are an attempt to override the requirements set forth under the California Environmental Quality Act (“CEQA”), and as such, are provisions that are plainly preempted by State law.

Ivar Ridgeway
July 20, 2012
Page 73

CEQA is a comprehensive statute that requires governments to analyze “projects” to determine whether or not they may have significant adverse environmental impacts. If such significant adverse impacts are determined to be present by the lead governmental agency, then under CEQA, these impacts must be disclosed and reduced or mitigated to the extent feasible. CEQA expressly provides “local” entities the discretion to analyze and approve projects that are deemed appropriate for the local community, following the environmental analysis directed by such statute, including an analysis of the impacts of the project on water quality. Moreover, CEQA provides local agencies the discretion to adopt a Statement of Overriding Considerations if the public agency finds that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” (PRC § 21081.)

By removing the Permittees discretion under CEQA to approve local developments projects, the Proposed Permit is in conflict with existing State law. For example, the Proposed Permit directly conflicts with CEQA by unlawfully attempting to direct how a local governmental agency is to approve a “project.” Under PRC section 21081.6(c), a responsible agency – such as the Regional Board – cannot direct how a lead agency is to comply with CEQA’s terms:

Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of an definitions applicable to, that agency.
Compliance or non-compliance by a responsible agency or

Ivar Ridgeway
July 20, 2012
Page 74

agency having jurisdiction over natural resources affected by a project with that requirement shall not limit ... the authority of the lead agency to approve, condition, or deny projects as provided by this division or any other provision of law. (PRC § 21081.6(c); emphasis added.)

In direct conflict with the terms of CEQA, with the Proposed Permit, the Regional Board seeks to impose permit terms that plainly “limit the authority of the lead agency to approve, condition, or deny projects.” Such requirements are contrary to CEQA.

In addition, PRC section 21081.1 states that the lead agency’s determination “shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.” It similarly provides that the lead agency “shall be responsible for determining whether an environmental impact report, a negative declaration, or mitigated negative declaration shall be required for any project which is subject to this division.” (PRC § 21080.1(a).) Further, no additional procedural or substantive requirements beyond those expressly set forth in CEQA may be imposed upon a local agency’s CEQA review process:

It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines. (PRC § 21083.1.)

Furthermore, PRC section 21001 provides that local agencies “should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (PRC § 21001.) However, the assumption with the Proposed Permit’s terms is that all runoff from a

Ivar Ridgeway
July 20, 2012
Page 75

wide class of New Development and Redevelopment projects will result in significant adverse impacts on the environment, namely, water quality, and that such impacts must, therefore, be mitigated by those particular mitigation measures as mandated in the Permit. Thus, the Proposed Permit dictates the terms and results of environmental review, without regard for CEQA's provisions, and eliminates a local governmental agency's discretion to consider and approve feasible alternatives or mitigation measures – even if alternative measures may have a lesser effect on the environment. The Proposed Permit's provisions, in short, would prevent environmentally preferable alternatives and/or mitigation measures, that would otherwise be required pursuant to CEQA, from being pursued and imposed.

In addition, PRC section 21002 provides that, “the Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.” PRC section 21081(b) then establishes a mechanism for local agencies to approve projects with unmitigated adverse impacts, by adopting a “Statement of Overriding Considerations.” The Proposed Permit's and Land Development Planning Program requirements would thus unlawfully void a local agency permittee's discretion to approve a project without the various design standards being met, even if that local entity adopts a Statement of Overriding Considerations.

Ivar Ridgeway
July 20, 2012
Page 76

Accordingly, the Proposed Permit's Planning and Land Development Program requirements are in conflict with the provisions of CEQA, and cannot, therefore, lawfully be adopted.

J. Various Portion Of The Proposed Permit Impose Unfunded State Mandates Which Are Not Permitted Under The California Constitution Unless First Funded By The State.

Article XIII B, Section 6 of the California Constitution prohibits the Legislature or any State agency from shifting the financial responsibility of carrying out governmental functions to local governmental entities. Article XIII B, Section 6 provides in relevant part as follows:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service. . . .

This reimbursement requirement provides permanent protection for taxpayers from excessive taxation and requires discipline in tax spending at both state and local levels. (*County of Fresno v. State* (1991) 53 Cal.3d 482, 487.) Enacted as a part of Proposition 4 in 1979, it “*was intended to preclude the state from shifting financial responsibility to local entities that were ill equipped to handle the task.*” (*Id.*)

As discussed above, for example, the incorporation of the various numeric limits as a means of requiring compliance with the referenced TMDLs or receiving water limits, are all requirements that are clearly not mandated by federal law, but that are being included as new State mandates without the Regional Board providing a means of funding these mandates. Other

Ivar Ridgeway
July 20, 2012
Page 77

provisions within the Proposed Permit similarly impose unfunded State mandates that cannot become effective unless first funded by the State, such as the requirements imposed upon the permittees to inspect what are classified as State permitted facilities. (In fact, the Proposed Permit requires the permittees to perform such inspections, even though the Regional Board already collects an inspection fee to conduct the inspections of these State permitted facilities.) All of these Proposed Permit provisions, including the trash receptacle provisions (Proposed Permit, pp. 101-102), cannot properly be included in this Permit unless and until funding has been provided to the Permittees. The imposition of these various unfunded State mandates particularly including those associated with the TMDLs and the trash provisions, as well as the inspection of State facilities, without the State first providing funding would violate Article VI.B, Section 6 of the California Constitution. (*See County of Fresno, supra*, 53 Cal.3d at 486, and *Haze v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1570.)

These unfunded State mandates imposed by the Proposed Permit are underscored by Proposition 218's severe limitations on a local agency's ability to impose fees upon residents as a means of alleviating the enormous compliance costs created by such mandates. (*See Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1353-54, 1358-59.) In that case, the Court of Appeal struck down the City of Salinas' "Stormwater Management Utility Fee" because said fee was not enacted by a required majority vote to effected property owners. (*Id.*)

Ivar Ridgeway
July 20, 2012
Page 78

Proposition 218 shares identical purposes with Proposition 4, which resulted in the constitutional amendment prohibiting unfunded mandates in 1979, *i.e.*, to provide permanent protection for taxpayers from excessive taxation and to provide discipline in tax spending at both State and local levels. (*See County of Fresno*, 53 Cal.3d at 486.) The Regional Board's attempt to transfer these mandates down to local agencies, which in turn necessarily must attempt to recoup their costs from taxpayers, violates the California Constitution.

III. CONCLUSION

For the foregoing reasons, the Proposed Permit for the County of Los Angeles and all cities incorporated therein, except the City of Long Beach, cannot be adopted as proposed; the terms of the Proposed Permit are not supported by the Findings; the proposed Findings are not supported by the evidence; and the Proposed Permit terms are otherwise contrary to law.

Respectfully submitted,



Richard Montevideo

RM:jlk

Enclosures

cc: Mr. Kenneth Farfsing

- (1) Exhibit List
- (2) Supporting Exhibits (all on CD)

**LIST OF EXHIBITS IN SUPPORT OF LEGAL COMMENTS ON
DRAFT MS4 NPDES PERMIT FOR LOS ANGELES COUNTY AND
CITIES THEREIN EXCEPT THE CITY OF LONG BEACH**

Submitted by Rutan & Tucker, LLP

Richard Montevideo

July 2012

DESCRIPTION	EXHIBIT NO.
July 30, 2010 Peremptory Writ Of Mandate And The July 16, 2010 Judgment in <i>County of Los Angeles v. State Board</i> , LASC Case No. BS122724	1
City of Signal Hill ROWD/NPDES Permit Applications, June 2006	2
July 12, 2006 Letter from Executive Officer to Signal Hill	3
September 12, 2006 Signal Hill Letter to Executive Officer	4
Oral and Power-Point Presentation Provided To The Regional Board At Board Meeting On June 7, 2012	5
State Board Order No. 99-05	6
State Board Order No. 2001-15	7
Order No. 2001-12 DWQ	8
January 30, 2002 Memorandum from Francine Diamond, Regional Board Chair	9
State Board Order No. 91-04	10
State Board Order No. 91-03	11
State Board Order No. 96-13	12
State Board Order No. 98-01	13
State Board Order No. 2000-11	14
State Board Order No. 2006-12	15

**LIST OF EXHIBITS IN SUPPORT OF LEGAL COMMENTS ON
DRAFT MS4 NPDES PERMIT FOR LOS ANGELES COUNTY AND
CITIES THEREIN EXCEPT THE CITY OF LONG BEACH**

Submitted by Rutan & Tucker, LLP

Richard Montevideo

July 2012

DESCRIPTION	EXHIBIT NO.
Stormwater Quality Panel Recommendations to The California State Water Resources Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities, June 19, 2006	16
April 18, 2008 letter from the State Board’s Chief Counsel to the Commission on State Mandates	17
Report Issued by the National Research Council of the National Academies of Science Entitled “Assessing the TMDL Approach to Water Quality Management,” September 2001	18
February 11, 1993 Memorandum issued by the State Board’s Office of Chief Counsel, subject “Definition of Maximum Extent Practicable “	19
August 22, 2003 Letter from US EPA Headquarters, Benjamin H. Grumbles to Honorable Bart Doyle	20
November 22, 2002 US EPA Memorandum Entitled “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources as NPDES Permit Requirements Based on Those WLAs”	21
Comments and Exhibits Relating to Bacteria TMDL for the Los Angeles River	22
Comments and Exhibits Relating to US EPA adopted Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDL	23

**LIST OF EXHIBITS IN SUPPORT OF LEGAL COMMENTS ON
DRAFT MS4 NPDES PERMIT FOR LOS ANGELES COUNTY AND
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July 2012

DESCRIPTION	EXHIBIT NO.
Comments and Exhibits Relating to Dominguez Channel and Greater Los Angeles Harbor and Long Beach Harbor Waters Toxic Pollutants TMDL	24
Comments and Exhibits Relating to Los Angeles River Metals TMDL	25
Comments and Exhibits Relating to Los Cerritos Channel Metals TMDL	26
Comments and Exhibits Relating to Los Angeles River Trash TMDL	27
Excerpts of Boards' Opening Appellate Brief in the <i>Arcadia</i> Case	28
Excerpts of Intervenors' Opening Appellate Brief in the <i>Arcadia</i> Case	29
2002 Study Prepared by University of Southern California, entitled "An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County"	30
Financial and Economic Impacts of Storm Water Treatment Los Angeles County NPDES Permit Area Presented to California Department of Transportation Environmental Program, Report I.D. #CTSWRT-98-72, November, 1998, by Stanley R. Hoffman Associates	31
Cost of Storm Water Treatment for the Los Angeles NPDES Permit Area, June 1998	32

**LIST OF EXHIBITS IN SUPPORT OF LEGAL COMMENTS ON
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CITIES THEREIN EXCEPT THE CITY OF LONG BEACH**

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July 2012

DESCRIPTION	EXHIBIT NO.
Cost of Storm Water Treatment for California Urbanized Areas October 1998 Prepared for California Department of Transportation, by Brown & Caldwell	33
“NEPDES Stormwater Costs Survey” by Brian K. Currier, Joseph M. Jones and Glen L. Moelle, California University, Sacramento dated January 2005 along with Appendix H included therewith entitled “Alternative Approaches to Stormwater Control” prepared by the Center for Sustainable Cities University of Southern California	34
Economic Forecast prepared by the California State University, Long Beach, for the Sixteenth Annual Regional Conference for Southern California and its Counties, May 2010	35
PowerPoint Presentations Presented at the Economic Forecast Conference on May 13, 2010	36
“A Guide to Consideration of Economics Under the California Porter-Cologne Act”, by David Sunding and David Ziberman, University of Berkeley, March 31, 2005	37
500 Plus Page Report Prepared for US EPA in 2008 by the National Research Council (“NRC”) of the National Academies entitled, “Urban Stormwater Management in the United States”	38
October 15, 2008 National Academies of Science Press Release	39

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THERESA BRUNS

City Clerk
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July 6, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board, Los Angeles
320 W. 4th Street, Suite 200
Los Angeles, California 90013

VIA U.S.MAIL

Re: Comments on Tentative County of Los Angeles Municipal Separate Storm Sewer System (MS4) Permit (NPDES No. CAS00400, Order No. R4-2012-XXXX)

Honorable Chairperson Mehranian:

Thank you for the opportunity to provide comments on the tentative County of Los Angeles Municipal Separate Storm Sewer System Permit (hereinafter referred to as the "LA MS4 Permit"). The City of San Dimas ("City") is a Permittee of the LA MS4 Permit and is located in the San Gabriel River Watershed. As a Permittee, the City would like to request the following:

Extension of the proposed Permit adoption date and

Timeline extension as outlined in Part VI.D.1.b.

Extension of the Proposed Permit Adoption Date

The proposed LA MS4 Permit adoption date of September 6, 2012 should be extended **at least six (6) months (180 days)** to provide adequate time for thorough review and necessary coordination. As whatever form the final permit is adopted, it will likely result in costly compliance with TMDLs and other requirements. For this reason we request an extension to allow adequate time to gauge and comprehend the budgetary impact to our budget. In addition, the LA MS4 Permit adoption schedule should parallel the adoption schedules provided to cities in the neighboring Counties of Orange and Ventura, as well as in San Diego County. Regional Boards for the aforementioned counties released and adopted MS4 Permits as follows:

- San Diego Regional Board – released tentative Order No. R9-2012-0011 on April 9, 2012 and has indicated that they will allow permittees at least **one (1) year** to negotiate and prepare for the upcoming permit requirements.
- Santa Ana Regional Board – posted Tentative Order No. R8-2008-0030 on November 10, 2008. Following four (4) draft Permits the final MS4 Permit was adopted on May 22, 2009. **(6 months)**

July 6, 2012

Page 2

- Los Angeles Regional Board – released the draft Ventura County MS4 Permit on April 29, 2008. This draft later became Order R4-2009-0057 and was adopted on May 7, 2009. **(one (1) year)**

Timeline Extension As Outlined in Part VI.D.1.b.

The timeline for LA MS4 Permit implementation in Part VI.D.1.b. should be extended from thirty (30) days to a minimum of 120 days. This extension will allow adequate time to develop ordinances, modify municipal codes, legal protocols for public hearings, and storm water programs (not otherwise given a compliance date) to make them consistent with the proposed LA MS4 Permit.

The City also requests that the LA MS4 Permit language mirror language in the tentative Caltrans Municipal Separate Storm Sewer System (MS4) Permit revised April 27, 2012. Language that

- Provides for an iterative process (trial and error process in meeting a TMDL);
- Assures Permittee compliance with the LA MS4 Permit and waste load allocations as long as BMPs are implemented;
- Determines compliance at the outfall and not the receiving water through BMP WQBELs rather than strict numeric WQBELs; and
- Relieves Permittees of having to comply with wet weather waste load allocations via Ambient monitoring that satisfy the receiving water monitoring requirement, to be conducted by the Regional Board using the SWAMP surcharge on the annual MS4 permit fee.

Again, thank you for the opportunity to provide comments on the tentative LA MS4 Permit. Should you have any questions or need additional information, please contact me at your convenience at (909) 394-6245 or via email at kpatel@ci.san-dimas.ca.us.

Sincerely,

CITY OF SAN DIMAS



Krishna Patel
Director of Public Works

cc: Charles Stringer, Vice Chairperson
Francine Diamond, Board Member
Mary Ann Lutz, Board Member
Madelyn Glickfield, Board Member
Maria Camacho, Board Member
Irma Camacho, Board Member
Lawrence Vee, Board Member
Samuel Unger, Executive Officer
Ivar Ridgeway, Stormwater Permitting (MS4)
Blaine Michaelis, City Manager, City of San Dimas
Latoya Cyrus, Environmental Services Coordinator, City of San Dimas

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July 20, 2012

Mr. Ivar Ridgeway
Senior Environmental Scientist
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Re: Tentative Los Angeles Municipal Separate Storm Sewer System (MS4) Permit
(Order No. R4-2012-XXXX) Comments

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the tentative County of Los Angeles Municipal Separate Storm Sewer System Permit, Order No. R4-2012-XXXX NPDES Permit No. CAS004001 (hereinafter referred to as the "LA MS4 Permit"). The City of San Dimas ("City") is pleased to submit the attached comments for your consideration. The attached comments are intended to be complementary yet an expansion to the comments submitted to you from the Los Angeles Stormwater Permit Group (LA Permit Group).

Please note that the City fully supports comments submitted to you from the LA Permit Group.

Again, thank you for the opportunity to provide comments on the tentative LA MS4 Permit. Should you have any questions or need additional information, please contact me at your convenience at (909) 394-6213 or via email at bmichaelis@ci.san-dimas.ca.us.

Sincerely,

Blaine Michaelis
City Manager

Cc: Krishna Patel – Director of Public Works
Latoya Cyrus – Environmental Services Coordinator

07-12-17 lc

July 20, 2012

Page 2 of 24

Tentative Los Angeles Municipal Separate Storm Sewer System (MS4) Permit
(Order No. R4-2012-XXXX) Comments (issue date unspecified)

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. **Issue:** Regional Board staff requiring WQBELs is premature because there has not been an exceedance of any TMDL WLA at the outfall. No exceedance has occurred because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

“Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the LA MS4 Permit’s Fact Sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document the process used to develop WQBELs in the NPDES permit fact sheet. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state’s anti-degradation policy was applied as part of the process. The information in the

July 20, 2012

Page 3 of 24

fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the LA MS4 Permit contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

“Effluent monitoring,” according to the Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Because Regional Board Staff has not required outfall monitoring, it could not have detected an excursion above a water quality standard, including TMDL WLAs. Therefore, Regional Board Staff could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

- b. **Issue:** Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

July 20, 2012

Page 4 of 24

reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

July 20, 2012

Page 5 of 24

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 Permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*.

The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. **Issue:** There cannot be a WQBEL to attain a dry weather TMDL WLA or a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions*.

LA Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

July 20, 2012

Page 6 of 24

- a. **Issue:** The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WOQ 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit's limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

July 20, 2012

Page 7 of 24

LA Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. **Issue:** By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 Permit and the draft Phase II MS4 Permit, articulated its policy on compliance with water quality standards: they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 Permit. This issue discussed in greater detail later in these comments.

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

July 20, 2012

Page 8 of 24

The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. **Issue:** The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 Permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 Permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

Moreover, both the draft Caltrans MS4 Permit and the draft Phase II MS4 Permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing

July 20, 2012

Page 9 of 24

to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.⁶*

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 Permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 Permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

⁷See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

July 20, 2012

Page 10 of 24

The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. **Issue:** The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order’s fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”*⁸ There is no mention of watercourses.

The tentative order’s fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to “effectively prohibit” non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

July 20, 2012

Page 11 of 24

paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. **Issue:** Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

July 20, 2012

Page 12 of 24

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall

July 20, 2012

Page 13 of 24

monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

a. **Issue:** The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The CERCLA provision appears innocuous, but what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. In addition, referencing CERCLA in the MS4 Permit could become a potential third party litigation issue. The inclusion of the CERCLA provision is also troubling when considering that no other MS4 Permit in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only "to" the MS4 makes this issue academic. A permittee's only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

Recommended Correction: Remove all references to CERCLA in the Draft LA MS4 Permit.

7. The tentative order, under the effluent limitations section, contains technology-based effluent limitations (TBELs) which typically are not included in MS4 Permits and, in this particular case, does not appear to be purposeful.

a. **Issue:** Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in stormwater discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase I MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a

July 20, 2012

Page 14 of 24

term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 Permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 Permits do not reference TBELs.

Clarification is necessary to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

- a. **Issue:** Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 Permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

July 20, 2012

Page 15 of 24

in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. **Issue:** SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. In replacing the SUSMP incurs an unnecessary cost to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successful implemented through the SUSMP program for over five years.

c. **Issue:** Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

d. **Issue:** The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the

July 20, 2012

Page 16 of 24

absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. **Issue:** The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the aforementioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

¹⁰Op. Cit., page 35.

July 20, 2012

Page 17 of 24

- a. **Issue:** It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an amendment. This argument has been raised by legal counsel for the City of Claremont.

The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. **Issue:** Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

July 20, 2012

Page 18 of 24

Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)

Attachment E: Monitoring and Reporting Plan

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

Purpose “a”, as listed above, is an issue because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 Permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1)

July 20, 2012

Page 19 of 24

limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee's discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee's discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations.*

In regards to purpose "a", listed above, outfall stormwater monitoring for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority*

Instead of following the above, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by

July 20, 2012

Page 20 of 24

the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to*

July 20, 2012

Page 21 of 24

Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.

Regarding purpose “b” it should also be noted that the Regional Board’s setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state’s anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council’s *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

¹¹United States Environmental Protection Agency, NPDES Permit Writers’ Manual, September, 2010, page 6-30.

July 20, 2012

Page 22 of 24

Recommended Correction: Eliminate this requirement.

Regarding purpose “c”, the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee’s discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee’s discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee’s discharge contributes to or causes an exceedance of receiving water limitations,*
- d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding purpose “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

With regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

July 20, 2012

Page 23 of 24

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This

July 20, 2012

Page 24 of 24

can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END OF COMMENTS



July 23, 2012

Mr. Ivar Ridgeway
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Sent electronically to:
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The City of San Gabriel is pleased to submit the attached comments for your consideration regarding Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

The City has participated in the development of, and fully supports, the comments submitted to you by the LA Permit Group. The City's comments contained herein are intended to complement the LA Permit Group comments (attached for reference).

Thank you for the opportunity to submit comments on this draft order. If you have any questions or request additional information, I may be reached at (626) 308-2806 ext. 4631 or dgrilley@sgch.org.

Sincerely,
COMMUNITY DEVELOPMENT

/Daren T. Grilley/

Daren T. Grilley, PE
City Engineer

Encl:
City of San Gabriel Comments
LA Permit Group Comment Letter

Copy:
Samuel Unger, Executive Officer
Kevin Sawkins, Mayor
Steve Preston, City Manager
Jennifer Davis, Community Development Director
Robert Kress, City Attorney

City of San Gabriel Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX - NPDES PERMIT NO. CAS004001

- 1. Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

"Effluent monitoring," according to Clean Water Act §502, is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

*Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.*³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in

State Board WOQ 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit's limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards: they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department’s storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the “iterative approach.”⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond “to” the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer*. The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system*.

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.* The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been

assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase “prior to mixing of either point or non-point source load of contaminants,” which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

- a. Issue: The non-stormwater discharge prohibition under the tentative order states:

Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only “to” the MS4 makes this issue academic. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.

- a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of

the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

- a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

⁹ NPDES Permit Writers' Manual, September, 2010, page 5-40.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge

oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

¹⁰Op. Cit., page 35.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

City of San Gabriel Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX - NPDES PERMIT NO. CAS004001 - Attachment E: Monitoring and Reporting Plan

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is “a” because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes “b” and “c” no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board’s surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee’s discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee’s discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee’s discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as “a” is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation*

through measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose “b”, such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

¹¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*
- d. Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the

Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines “effectiveness” -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies “*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*”

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board’s SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County’s mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END CITY OF SAN GABRIEL COMMENTS



LA PERMIT GROUP

July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations

- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (ExhibitD);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹² (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm¹³. In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹² No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

¹³ January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.¹⁴) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long -term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

¹⁴ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹⁵), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)¹⁶ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

¹⁵ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

¹⁶ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings supporting either the numeric or non-numeric effluent limitations contained in the permit.”

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds¹⁷. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits¹⁸. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based effluent limitations for final WLAs in this Permit**. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at

(Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

¹⁷ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

¹⁸U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**

- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations¹⁹ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.
- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft OrderDraft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at

¹⁹ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors²⁰. This constraint, as well as USEPA position²¹ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft OrderDraft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

²⁰ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

²¹ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California

these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.**

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post**

construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall.** If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board’s proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable.** Alternatively we would suggest a phased approach where some initial efforts (e.g.

MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee’s control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**
- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- The timing of revising the Watershed Management Programs is in conflict and confusing. **There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote.**

Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this. Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo²² from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and \$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, **it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.**

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement²³ that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectfully request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review

²² Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

²³ S. Unger's 7/13/12 letter to H. Maloney and the LA Permit Group.

the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

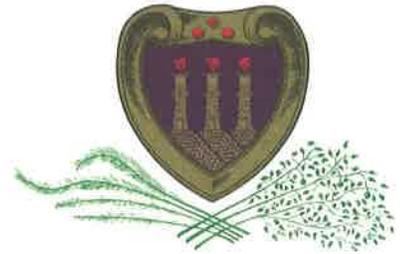
Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

City of San Marino



July 20, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013
LAMS42012@waterboards.ca.gov
rpurdy@waterboards.ca.gov
iridgeway@waterboards.ca.gov

Dear Mr. Ridgeway:

The City of San Marino ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxxx, NPDES Permit No. CAS004001 ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of San Marino, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the

Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first

day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See* Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA, which is similar to the language in the Draft Caltrans Permit. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City’s Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth

Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution California also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has **removed** the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board’s discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA’s regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of

California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit’s Minimum Control Measure Program is an Unfunded State Mandate

The Permit’s Minimum Control Measure program (“MCM Program”) qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.*, Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov’t Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with

California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee’s discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Co-Permittees

The Regional Board cannot require the City to entire into agreements or coordinate with other co-permittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitttees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees’ data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet’s open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees’ actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. *See* Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the co-permittees will be left to implement the Permit's requirements without the funds to do so. Even if the the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as

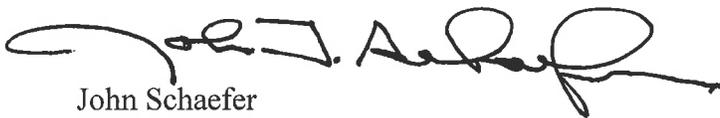
bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



John Schaefer
City Manager
City of San Marino

cc: Lucy Garcia, Assistant City Manager



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July 23, 2012

Mr. Ivar Ridgeway and Ms. Renee Purdy
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(Electronically to LAMS42012@waterboards.ca.gov
iridgeway@waterboards.ca.gov
rpurdy@waterboards.ca.gov)

**Subject: Comment letter – Draft National Pollutant Discharge Elimination System
(NPDES) Permit (Draft Order) for Los Angeles County from City of Santa Clarita**

Thank you for the opportunity to comment on this very important draft permit. The City of Santa Clarita (City) supports the comment letter from the Los Angeles Stormwater Permit (LASP) group. However, the City reiterates the following issues of concern.

- The critical issue of changing the Receiving Water Limitations language to reflect the California Stormwater Quality Association (CASQA) language referenced in the LASP letter.
- Providing more time through an additional draft tentative order and comment period of 180 days that provides a response to comments.
- Utilizing the iterative approach and best management practices rather than absolute end of pipe waste load allocations in total maximum daily loads (TMDLs).
- Reasonable monitoring standards that allow for source tracking and prioritization rather than restrictive standards that will require action everywhere simultaneously.
- Eliminating shifting state responsibilities to local governments to ratchet up, enforce and track Industrial NPDES Permits and General Construction Activities NPDES Permits.

In addition to the above comments, the City is concerned about statements regarding the economic impacts, unfunded mandates, hydromodification, and the Santa Clara River Bacteria TMDL. Also, the City requests the Fact Sheet not be included as part of the permit, as there are many errors and unfounded statements in that document.



Economic Consideration

The economic analysis is inadequate to the magnitude of the costs to cities, residents, and businesses as a result of the draft NPDES Permit requirements. The Fact Sheet opines that costs are inflated. Over the past year, the LASP, individual cities and other groups have asked for a workshop on economics to discuss these issues. The Regional Board has restricted any discussion of economics at public workshops and hearings. The Fact Sheet analyzes only the 2010-2011 fiscal year and does not provide sufficient information. In recent years, municipalities have been facing tough economic constraints and have had to scale back. Permittees have been submitting annual reports with economic data for more than ten years. Therefore, it is unclear why the Regional Board would state true costs of compliance are difficult to determine. In addition, the economic analysis focuses on the existing requirements in the current permit. The proposed draft permit dictates significantly large increases to existing programs, new Best Management Practices (BMPs), vastly expanded monitoring requirements, and overall increases compliance record-keeping. An accurate economic analysis needs to be completed before all these requirements are imposed on permittees.

Another concerning part of the economic analysis is removing trash related BMPs costs to make the costs more in line with statewide averages. The current permit requires many trash related BMPs that require a significant expenditure of funds. The requirements for trash abatement are vastly expanded in this draft permit. Removing street sweeping and other trash related expenses does not give a complete account of permit related costs.

The Fact Sheet makes a brief statement this draft permit will represent costs above and beyond the current permit. However, these costs are not captured in the economic analysis, including the additional costs that TMDLs represent. With TMDLs now being incorporated into this NPDES Permit, the massive expansion of monitoring requirements and the need for additional inspectors the costs will exceed the \$120 per household number. For example, in the Santa Clara River Bacteria TMDL Regional Board staff report, the total cost of structural BMPs was estimated by the Regional Board at \$161,717,386 and operations/maintenance at \$6,810,000. The Los Angeles County portion of the watershed is roughly half of the total watershed, but at 50 percent this still represents a substantial stormwater program cost increase.

Recently the City received proposals to complete the reports and studies necessary in the next several years to comply with the Bacteria TMDL. The proposals to develop the plans and some monitoring required in the Bacteria TMDL estimated costs up to \$1,800,000. The City has a dedicated funding source in the form of a stormwater utility fee that generates \$2,500,000 to \$3,000,000 annually. The funding is largely consumed by implementing the existing NPDES

Mr. Ivar Ridgeway and Ms. Renee Purdy
July 23, 2012
Page 3

Permit requirements. The funding will not be sufficient to cover the costs of compliance with only one TMDL and the massive increases in costs contained in the proposed draft permit.

The costs of compliance with this permit will directly and indirectly affect residents, businesses, and even potable water suppliers. For example, the costs associated with draining a swimming pool are prescribed in the non-stormwater discharge prohibitions. To comply with the permit, the City would have to send an inspector to the site, send a two-person crew and vector truck to clean the flowline and the catch basin, and monitor the discharge to ensure chemical levels were below allowable limits. The cost of inspections and cleanings needed to meet the requirements of this draft permit that allow discharge of a residential swimming pool are estimated to be between \$300 and \$500 per incident. Potable water suppliers discharge drinking water into the storm drain as part of their pipe-maintenance program. These potable water discharges will be subject to essentially the same requirement as swimming pool discharges. Water suppliers in the area currently discharge daily. This translates into an annual cost of nearly \$130,000 per year just for the water suppliers discharge alone. These costs have a cumulative affect that has not been analyzed or considered.

Unfunded Mandates

The Fact Sheet makes a unilateral comment the Regional Board has determined that the permit requirements do not exceed Federal Requirements, and therefore, is not an unfunded mandate. At the very least, the Regional Board should substantiate this statement for each section of the permit. The section of the Fact Sheet that provides the opinions regarding unfunded mandates in the NPDES Permit should be removed or supporting information should be provided.

As stated in the economic section of the Fact Sheet, this new permit does constitute "a higher level of service" as compared to the requirements in the current permit. This includes, but is not limited to, new post construction inspections, additional construction site inspections, low-impact development projects, TMDL incorporation, substantially more monitoring, and increasing the frequency and effort of tracking Regional Board and State Board issued NPDES Permits for construction sites and industrial facilities. Since this is not a BMP based permit, the costs to comply are essentially unlimited.

The statement that industrial and construction site NPDES Permits are more stringent than this draft permit is inaccurate. These businesses can restrict who is allowed on their sites, and perform all manner of control over their private property. Cities have no such ability to restrict the activities of citizens and businesses; making a comparison between a City and Industrial/Construction NPDES permittee is an inaccurate and unfair comparison. In addition, based on the current draft, cities will be responsible for enforcing those permits.

Mr. Ivar Ridgeway and Ms. Renee Purdy
July 23, 2012
Page 4

In the fourth point on page F149, it is unclear what is meant by “the Permittees have requested permit coverage in lieu of compliance with the complete prohibition”. Please clarify what is meant by this section. Also, please clarify how Article XIII B of the California Constitution applies to an unfunded mandate claim related to NPDES Permits. Lastly, the argument that cities can charge fees for all the permit requirements overly simplifies how cities can comply and the impact this permit has on our citizens and businesses. Proposition 218 requires a vote before any fee is enacted and during a time of already significant economic hardship the costs of regulations must be thoroughly considered.

Hydromodification

Absent a hydromodification policy from the state that clearly defines the goals, any modification to the current requirement is premature and does not improve water quality. The attached draft analysis demonstrates that the erosion potential is a poor tool for addressing hydromodification. Once a final policy is complete, only then should any changes be considered for hydromodification. There should be an analysis of the natural hydromodification found in a watershed before any additional retention standard is established. The Santa Clara River is a highly active natural river with unique hydrology. Please do not change any hydromodification standards from the current permit until such time as these substantial issues are worked through.

Santa Clara River Bacteria TMDL

The provisions detailed in the TMDL section should match the approved TMDLs. For example, the number of compliance days on the two Allowable Exceedance Days tables on page L-2 does not match the compliance days in the approved Santa Clara River Bacteria TMDL and adds weekly compliance days. Also, there is no discussion that the TMDL allows for load based options. Seemingly minor inconsistencies such as these throughout the draft permit have tremendous compliance and cost implications to permittees. If there is a modification, it should go through the TMDL amendment process.

Detailed Comments

Please see the attached list of detailed comments.

This draft permit is over 500 pages and incorporates provisions for 33 TMDLs, details new implementation requirements, new low-impact development requirements, and extensive new requirements for new water quality monitoring. There are extensive referrals to attachments, other documents, parts and tables in other parts of the draft permit in addition to

Mr. Ivar Ridgeway and Ms. Renee Purdy
July 23, 2012
Page 5

typographical errors that make this draft permit confusing to follow and do not provide a clear path to compliance. There are also tremendous cost implications associated with the requirements as well as significant penalties for not implementing the permit in its entirety. The City appreciates the Regional Board holding several workshops on separate sections of the NPDES Permit. However, modifications, additions, and deletions have been made to the permit since then with no explanation or response to comments as to why some changes have been made and others remain. In addition, this is the first time permittees have had a chance to review the draft permit in its entirety to understand how the requirements work together. Permittees have been given only 45 days to review and provide detailed written comments on this important, complex regulation.

This draft permit, as written, contains numerous typographical errors and redundant programs that are extremely costly to implement. At this time, a revised draft permit is warranted with a sufficient comment period (180 days) to give permittees the opportunity to see any changes made to the permit and provide proper comments prior to the adoption hearing. Permittees are committed to working with Regional Board staff to amend language and resolve any issues.

In closing, the City appreciates the opportunity to comment. Should you have any questions about the comments provided in this letter, please contact me at tlange@santa-clarita.com or (661) 286-4098.

Sincerely,



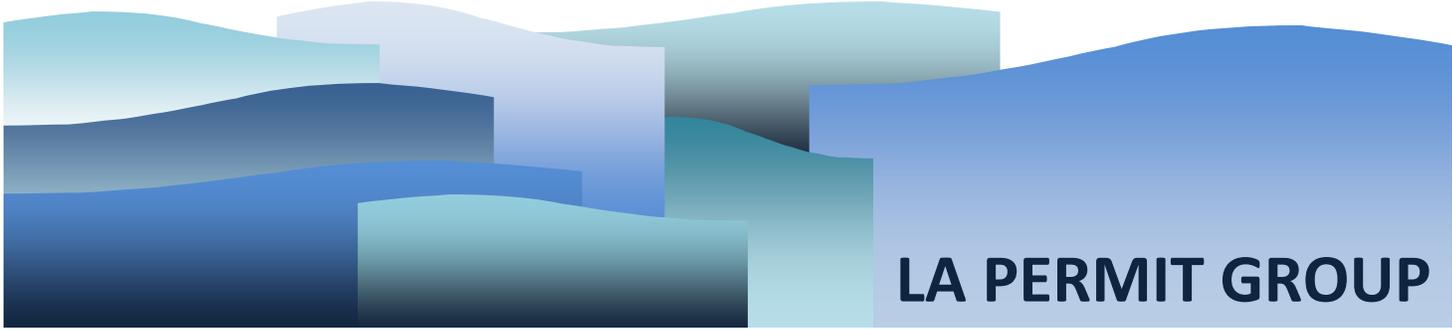
Travis Lange
Environmental Services Division Manager

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Enclosures: LASP Group Comment Letter Dated July 23, 2012
Draft Impact Analysis of Proposed National Pollutant Discharge Elimination
System Permit Hydromodification Criteria
Detailed Comments

cc: Robert Newman, Director of Public Works



LA PERMIT GROUP

July 23, 2012

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California Regional Water Quality Control Board, Los Angeles Region
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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

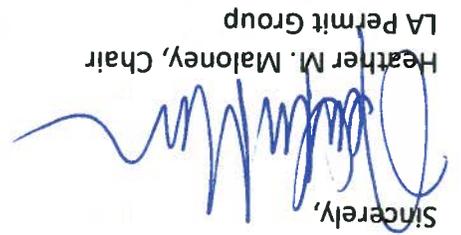
As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, we respectfully request that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document. We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

Exhibit A

LA Permit Group

City of Agoura Hills	City of Gardena	City of Pico Rivera
City of Alhambra	City of Glendale	City of Pomona
City of Arcadia	City of Glendora	City of Redondo Beach
City of Artesia	City of Hawthorne	City of Rolling Hills
City of Azusa	City of Hermosa Beach	City of Rolling Hills Estates
City of Baldwin Park	City of Hidden Hills	City of Rosemead
City of Bell	City of Huntington Park	City of San Dimas
City of Bell Gardens	City of Industry	City of San Gabriel
City of Bellflower	City of Inglewood	City of San Marino
City of Beverly Hills	City of La Verne	City of Santa Clarita
City of Bradbury	City of Lakewood	City of Santa Fe Springs
City of Burbank	City of Lawndale	City of Santa Monica
City of Calabasas	City of Los Angeles	City of Sierra Madre
City of Carson	City of Lynwood	City of South El Monte
City of Claremont	City of Malibu	City of South Gate
City of Commerce	City of Manhattan Beach	City of Torrance
City of Covina	City of Monrovia	City of Vernon
City of Culver City	City of Montebello	City of West Covina
City of Diamond Bar	City of Monterey Park	City of West Hollywood
City of Duarte	City of Paramount	City of Westlake Village
City of El Monte	City of Pasadena	

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Agency/Reviewer: LA Permit Group

Comment No.	Doc. Reference		Comments	
	Page	Section	Apr-12	Jul-12
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards .</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofitting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers . Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s).”</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year...”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls in the inventory within 5 years...”

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals



February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However, the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

**LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12**

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:

- a. evaluates the current conditions in impaired water bodies (identified by effective TMDLs), facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- c. identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4
- d. promotes the IWMP and provides time schedule incentives.

The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. Pyrethroid Study. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. Hydromodification Study. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts¹. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. Low Impact Development Study. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort. *Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.*

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23?) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide 18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:

- a. Unclear how baseline non-stormwater flows are established.
- b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).
- c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

² Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

- d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.
- e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.
- f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.
- g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watersheds and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permittees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health³ or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

³ The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS, cont.

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLA, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a "one size fits all" approach.

a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:

- i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
- ii. Runoff reduction BMPs;
- iii. Treatment control BMPs where effectiveness information is available;
- iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
- v. Research and development for pollutant types where effective BMPs have not been identified.

b. These categories will be incorporated as part of the Stormwater Quality Management Plans.

c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.

2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:

- a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
- b. specific procedures for evaluating BMP effectiveness; and
- c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEF given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

- "point sources", which are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA."
2. Define BMP-based WQBELs as "implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAS, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAS." This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
 3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
 4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
 - a. Not submitting the SQMP.
 - b. Not implementing all elements of the SQMP in accordance with the approved schedule.
 - c. Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states "The Permittees shall comply with the following effluent limitations and/or receiving water limitations..." This is followed by tables with the numeric WLAs.

We have three concerns with this language:

1. The language implies that the effluent limitations are strictly numeric.
2. The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
3. The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

EXHIBIT B

We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.

May 14, 2012

Renee Purdy

Regional Program Section Chief

Los Angeles Regional Water Quality Control Board

320 4th Street, Suite 210

Los Angeles, CA 90013

Ivar Ridgeway

Chief, Stormwater Permitting

Los Angeles Regional Water Quality Control Board

320 4th Street, Suite 210

Los Angeles, CA 90013

SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the

Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provide stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose to develop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAS, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAS.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAS solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹), State Board orders (Order

¹ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)² have affirmed that WLAS can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAS as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAS in NPDES permits³. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how the WLAS are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible⁴.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAS in this permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAS. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAS by implementing actions that they have estimated to be the best of their knowledge will result in achieving the WLAS and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAS are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAS, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

² "[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit." (Order WQ 2009-0008, in the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

³ U.S. EPA, *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner* (Nov. 10, 2010).
⁴ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopening process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*⁵ (NRDC v. County of LA) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party lawsuits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

⁵ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

Beyond the legal/liability aspect of the receiving water limitations we would submit that in a practical sense the RWL works against the Watershed Management Program proposal. On the one hand the municipalities will develop watershed management programs that are based on the high priority water quality issues within the watershed. Consistent with the working proposal for the watershed management programs we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal the municipalities will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State there may be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms but according to the current RWL proposal, the municipalities must also address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectfully request that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it is important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Document Name: TMDL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference Page	Section	Comments	Rvwr (optional)	Author Response
1	5	B.1.c.(2)	Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.		
1	5	B.1.c.(2)	Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.		
1	5	B.1.c.(2)	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		

2		B.1.	<p>The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.</p>		
3		B.1.	<p>The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.</p>		
4	5	B.1.c.(3)	<p>Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".</p>		
5	1-6	B.1 throughout	<p>This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".</p>		

6	5	B.1.c(3)	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.		
7	6-7	B.2.	Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.		
8	7	B.3.	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]		
8	7	B.3.	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.		

9	7	B.3	<p>Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.</p>		
10	3	C.2.c)	<p>The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.</p>		

11	3	C.2.c)	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>		
12	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.</p>		
13	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.</p>		

14	3	C.3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		
15	4	C.5.a)	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.		
16	4-8	C.5.	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		
17	1, 3, 15	Attach I	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		
18	2	E.2.b.v.1.	Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."		

19	3	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."		
20	4	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.		
21	8	E.5.b.(c)	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.		
22	7	E.5.a.i-x	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?		
23	2	E.2.b.ii	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		
24	2	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.		

26	3	E.2.c.iii	For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopener purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.		
28	5	E.4.a	This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.		
29	12-13	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.		
30	7	E.5	Please clarify that cities are not responsible for retrofitting.		
31	4	E. 2. e	Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.		

32	4	E.3	Instead of TSO, please include mechanisms that allow for time to complete Basin Plan Amendments for EPA Established TMDLs. This will protect cities from unnecessary vulnerability and allow for these TMDLs to be incorporated into the Watershed Management Programs. Incorporate permit language that will reopen the LA MS4 upon completion of the Basin Plan Amendments necessary for coordination with these programs.		
33	Santa Clara River	A. 4 c)	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.		
34		1 E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
35			Santa Ana River TMDLs should be removed; this TMDL is eliminated		
36	9	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institutional controls will supplement full and partial capture to attain a determination of "zero" discharge.		
37	10	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.		
38	1 of 19	B	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.		
39	3 of 24	3.a)1	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.		
40	6 of 24	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.		
41	1 of 9	1.b	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.		
42	1 of 9	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations.		

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations-- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Document Name: Watershed Management Program Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

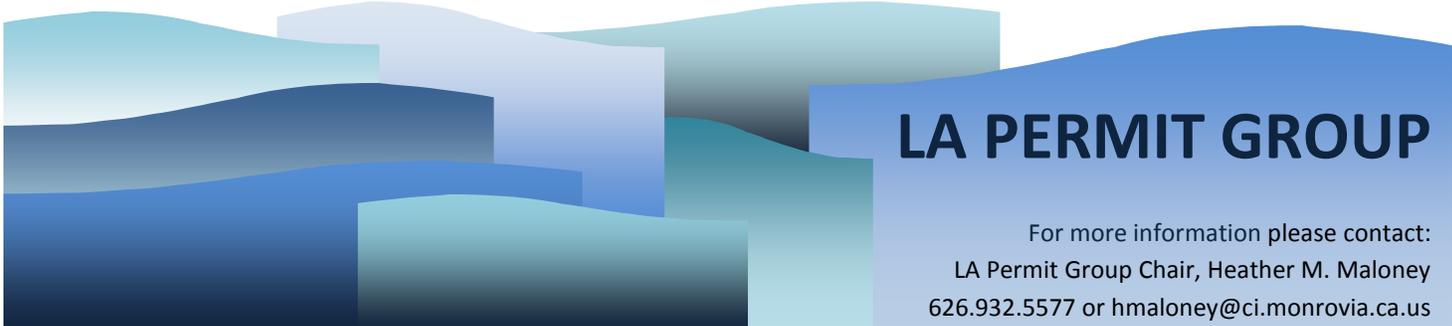
Comment		Doc. Reference		Comments	Rvwr (optional)	Author Response
No.	Page	Section				
1	4	(4)		Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		
2	2, 11, 13	various		The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		
3	2, 3	Table and C.2.a - d		Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs		
4	4	C.3.a.iii		Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
5	9	(5)		Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility		
6	2	C.2		Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs		

7	9	(4)(c)	<p>While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than than number.</p>		
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Document Name: RWL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference		Comments	Rvwr (optional)	Author Response
	Page	Section			
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		



LA PERMIT GROUP

For more information please contact:
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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan.. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or pursue a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position² that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State's General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupportable. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

“MCMs for ID/IC”

The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges.

Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

**LOS ANGELES PERMIT GROUP COMMENTS
 MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
 LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
General			
1	2	C.1.c	<p>The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used:</p> <p><i>“Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p><i>“New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i></p> <p><i>“Redevelopment” means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
2	4	2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

3	4	2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
4	4	2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
5	5	2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible; to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
Fiscal Resources			
6	5	3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

7	5	3.a	<p>Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
Public Information and Participation Program			
8	6	6.a.iii	<p>Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
9	7	6.d.i.2.b	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
10	8	6.d.i.3	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
Industrial/Commercial Facilities Program			
11	10	7.b.i.4	<p>Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL..."</p> <p>As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICSs/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

12	10	7.b.ii.6	<p>Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility"</p> <p>Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."</p>
13	11	7.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>
14	17	7.e.i	<p>Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.</p>
15	17	7.e.i	<p>Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.</p>
Development Planning			
16	21	8.b.1	<p>This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.</p>
17	21	8.b.i.1.g	<p>Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.</p>
18	21	8.b.i.1.g	<p>The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.</p>
19	21	8.b.i.1.g	<p>Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

20	21	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	24	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)k)-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i(1) statement.
22	24	8.c.i.2	The SWQDv definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "... designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDv) defined as the runoff from all impervious surfaces that are generated by a:..."
23	24	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	24	8.c.i.5	Please define the term "wet-weather season".
25	24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	24	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscaping within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26	Table	The table provided lacks clarity and the use of M_v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26	Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	28	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDv will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the “peak flow control” requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E_p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

41	40	8.d.iv.b	This requirement should be limited to the sites already visited as part of the “critical sources” program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.
Development Construction			
42	41	9.d	Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.
43	41	9.e.1.i	Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.
44	42-43	9.f.ii	The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.
45	43	9.f.ii.3.i	An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.
46	43	9.f.ii.4	The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.
47	43	9.f.ii.5	The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permittees without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permittees are not made responsible parties for this activity.
48	43	9.f.ii.8	The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.
49	43-44	9.g.i	The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement.
53	48	9.h.ii.2	The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	50	9.h.ii.5.b	The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans." the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are install properly, and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

57	54	10.d	<p>Staff proposal states: "Each Permittee shall develop an inventory of retrofit opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards."</p> <p>This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.</p>
58	56	10.d.v	<p>Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.</p>
59	56	10.e.ii	<p>Staff proposal states: "Each Permittee shall implement the following measures for flood management projects"</p> <p>Flood management projects need to be clearly defined.</p>
60	60	10.g.ii.7	<p>Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters..."</p> <p>The method which a pesticide that causes "impairment" to waterbodies needs to be defined.</p>
61	62	10.h.iv.1.c	<p>Staff proposal states: "Provide clean out of catch basins... 24 hours after event"</p> <p>Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."</p>
62	63	10.h.vii.1	<p>This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.</p>
63	64	10.h.ix	<p>Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...."</p> <p>The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do “non-stormwater outfall-based monitoring program” as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a “non-stormwater outfall-based monitoring program”. Please revise each mention of “ <i>Each Permittee</i> ” to “Permittee/Permittees” to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving waterbody monitoring in-lieu of outfall monitoring.
65	-	11	A definition of “outfall” is required for clarity. An “outfall” for purposes of “non-stormwater outfall-based monitoring program” should be defined as “major outfall” pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of “ <i>outfall</i> ” to read “major outfall” when discussing “non-stormwater outfall-based monitoring program”.
66	68	11.a	Some small cities do not have digital maps. In the “General” category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, “ <i>Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time.</i> ” This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on “As-Built” drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. “The contributing drainage area for each outfall should be clearly discernable...” The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read “The name of all receiving water bodies from those MS4 major outfalls identified in (1).”
69	69	11.c.i	The LA Permit Group proposes “non-stormwater outfall-based monitoring program” to be flow based monitoring. Please revise item (4) of 11., c. i. to read “(4) monitoring flow of unidentified or authorized non-stormwater discharges, and...”
70	69	11.c.i.4	“Monitoring of unknown or authorized discharges” “Authorized” discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to “Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located.” It is not know if a discharge is illicit until the investigation is completed.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

72	70	11.d.ii	Please revise the proposed language to “At a minimum, each Permittee/Permittees shall initiate an investigation(s) to identify and locate the source within 48 hours of becoming aware of the suspected illicit discharge.” Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	“Illicit discharges suspected of sanitary sewage... shall be investigated first.” ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the “most toxic or severe threat to the watershed” shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to “If the source of the discharge is found to be authorized under a NPDES permit...” If the discharge is permitted, then it is not “illicit”.
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to “If the source of the illicit discharge has been determined to originate within a Permittee’s jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification.” “Non-stormwater” discharges do not equate to “illicit” discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to “If the source of the suspected illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall...” Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	<p>Please revise the proposed language <i>“the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.”</i> To “the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board.”</p> <p>In the case that an Illicit Discharge is ongoing, then the discharger can be identified and the responsibility to clean up and eliminate the discharge lies with the discharger. Any illicit discharge for which the Permittee has exhausted their Progressive Enforcement Policy should be deferred to the Regional Water Quality Control Board for additional Progressive Enforcement or permitting.</p>
78	71	11.e.i	Please revise the first sentence to “Permittee/Permittees, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days...” The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the “days of completion” from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

80	71	11.f.i	Revise the proposed first sentence to “Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point...” It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71 & 72	11.f.ii.1&2	Revise “PIPP” to “Hotline”. The subject of this item is “reporting hotline requirements”.
82	72	11.f.iii	Omit this section. “No Dumping” signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, “The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee.” This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to “Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority.” Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bioretention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	<p>RB staff proposed language requires the permittees to “effectively prohibit non-stormwater discharges into the MS4 and from the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p style="text-align: center;"><i>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges²:</p> <p style="text-align: center;"><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water</i></p>

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

² 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
			<p><i>discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges <i>from</i> the MS4 discussed.</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p>
2	3	III.A.3.b	<p>This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.</p>

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
			We'd suggest that Table "X" be revised to include specific sections in Part V or VI.D that may modify the exempt determination. We'd respectfully request that, based on the Executive Officer's determination of a problem, a reopener clause is added so the Permit may be amended to account for changes exempt/conditionally exempt status.
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

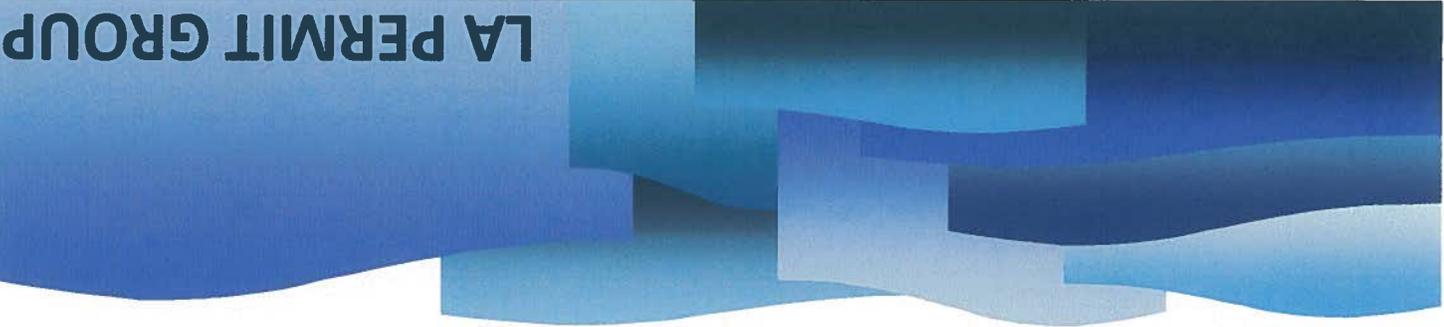
No.	Page	Citation	Comment
			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
15	Table X	General	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDS category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period



July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

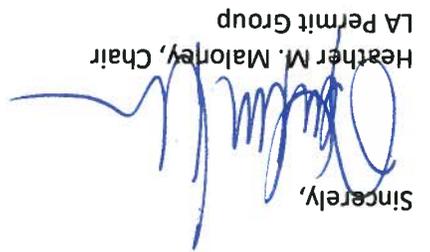
- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

- cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfeld, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit



June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal’s decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court’s opinion addressed two key issues for California’s MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive, flowing style.

Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

Impact Analysis of Proposed National Pollutant Discharge Elimination System Permit Hydromodification Criteria

Prepared for:

City of Santa Clarita

23920 Valencia Blvd., Suite 300
Santa Clarita, CA 91355-2196

Prepared by:



2100 E. Howell Avenue, Suite 209
Anaheim, CA 92806-6003

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April 17, 2012

Table of Contents

1. INTRODUCTION	1
2. STORM RUNOFF CRITERIA ANALYSIS	3
2.1 ANALYSIS OF STORAGE REQUIREMENT IMPACTS ON DEVELOPERS	3
2.2 ANALYSIS OF STORAGE AREA FOOTPRINT SIZE	7
2.3 ANALYSIS OF FLOW RATES, VELOCITIES, AND DURATION REQUIREMENTS.....	10
3. STREAM CLASSIFICATION SYSTEMS, HYDROLOGIC MODELS, AND EROSION POTENTIAL ANALYSIS	11
4. PROPOSED EXEMPTIONS TO HYDROMODIFICATION CONTROLS	14
5. THOUGHTS ON POSSIBLE HYDROMODIFICATION PERMIT LANGUAGE	15
6. CONCLUSIONS	17

List of Figures

Figure 1. 95 th Percentile Isohyets in the City of Santa Clarita.....	4
Figure 2. Isohyets for the 2-year 24-hour Storm Event in the City of Santa Clarita	5
Figure 3. Unit Volume Factors for Hydromodification Analysis	7
Figure 4. Key Elements of E _p Methodology	12
Figure 5. Definitions of Key Parameters in E _p Methodology	12

List of Tables

Table 1 Sensitivity Analysis Combinations for 95 th Percentile and 2-year 24-hour Storms	3
Table 2. Runoff Volume/Acre Based on Rainfall Isohyets (Unit Volume Factor)	6
Table 3. Storage Footprint Area as a Ratio to Watershed Area Based on Storage Depth	9

1. Introduction

The City of Santa Clarita (City) engaged California Watershed Engineering (CWE) to analyze the proposed modifications to the National Pollutant Discharge Elimination System (NPDES) Permit to develop a better understanding of the potential impacts associated with the implementation of the proposed hydromodification provisions. The permit language currently being considered by the Los Angeles Regional Water Quality Control Board (LARWQCB) considers two classifications of watersheds, those less than 50 acres, and those greater than 50 acres. The proposed hydromodification language for the permit is as follows:

Watersheds Smaller Than 50 Acres:

1. The project is designed to retain on-site, through infiltration, evapotranspiration, and/or harvest and use, the stormwater volume from the runoff of the 95th percentile storm, or
2. The runoff flow rate, volume, velocity, and duration for the post-development condition do not exceed the pre-development condition for the 2-year, 24- hour rainfall event. This condition may be substantiated by simple screening models, including those described in *Hydromodification Effects on Flow Peaks and Durations in Southern California Urbanizing Watersheds* (Hawley et al., 2011) or other models acceptable to the Executive Officer of the Regional Water Quality Control Board, or
3. The Erosion Potential (E_p) in the receiving water channel will approximate 1, as determined by a Hydromodification Analysis Study and the equation presented in Attachment (to be determined).

Watersheds Greater Than 50 Acres:

1. The site infiltrates on-site at least the runoff from a 2-year, 24-hour storm event, or
2. The runoff flow rate, volume, velocity, and duration for the post-development condition do not exceed the pre-development condition for the 2-year, 24- hour rainfall event. These conditions must be substantiated by hydrologic modeling acceptable to the Executive Officer of the Regional Water Quality Control Board, or
3. The Erosion Potential (E_p) in the receiving water channel will be less than 1.

Exemptions to Hydromodification Requirements:

Several exemptions to the hydromodification requirements are provided in the March 21, 2012, working proposal of the permit provisions related to the Minimum Control Measures (MCMs) for New Development and Redevelopment Projects. Projects may be exempt from the implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to present and future beneficial uses of Natural Drainage Systems are unlikely:

1. Projects that are replacement, maintenance, or repair of an existing flood control facility, storm drain, or transportation network.
2. Redevelopment projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions.
3. Projects that have any increased discharge directly or via a storm drain to a sump, lake, area under tidal influence, into a waterway that has a 100-year peak flow (Q_{100}) of 25,000 cubic feet per second (cfs) or more, or other receiving water that is not susceptible to hydromodification impacts.

4. Projects that discharge directly or via a storm drain into concrete or otherwise engineered (not natural) channels (e.g., channelized or armored with rip rap, shotcrete, etc.), which, in turn, discharge into receiving water that is not susceptible to hydromodification impacts.

These changes in storage requirement increase the cost of developing residential, commercial, and industrial properties and could greatly impact residents, businesses, and economic development. The 95th percentile storm is approximately twice the size of the 0.75-inch 24-hour or 85th percentile 24-hour storm volumes previously required to be treated to meet the Standard Urban Stormwater Mitigation Plan (SUSMP) criteria. Understanding the impacts of these proposed changes is important in working with the LARWQCB to develop appropriate standards which protect the environment while allowing growth and development to occur.

Two general types of analysis are required to determine impacts to development and communities. The first is analysis of the stormwater volume, flow rate, velocity, and duration criteria. This analysis relates to changes in volume due to changes in land use. Analysis of the proposed changes to the NPDES Permit require evaluating storage of runoff from the 95th percentile 24-hour rainfall event and differences between volumes, flow rates, velocities, and durations for the 2-year 24-hour rainfall event.

The second type of analysis deals with stream stability. Increases in flow rates, velocities, volumes, and durations can impact stream stability. Changes to sediment supply can also impact stream stability. The requirement of the proposed NPDES Permit to use the Erosion Potential (E_p) methodology as a measure of stream stability is evaluated. This second analysis also discusses use of hydrologic models acceptable to the LARWQCB and the unidentified stream classification methodologies.

The results of these analyses show the percentage of area required for storage in easy to use tables and graphs. Costs for these facilities will vary greatly depending on whether they are open ponds or buried facilities. It is beyond the scope of this project to provide cost estimates for the various methods of detention.

2. Storm Runoff Criteria Analysis

The two main tasks in the analysis of the proposed hydromodification provisions is to evaluate the requirements to store the volume of stormwater runoff from the 95th percentile 24-hour storm, or prevent increases in flow rate, volume, velocity, and duration from the 2-year, 24-hour storm.

2.1 Analysis of Storage Requirement Impacts on Developers

CWE determined that evaluation of the permit language required modeling of pre- and post-development hydrology for expected conditions within the City. The combinations of factors that influence the hydrology of a site can be extensive. The parameters that can impact runoff volumes and rates include:

- Rainfall totals and intensity;
- Watershed size and shape;
- Type of soils;
- Slope of the land;
- Vegetation; and
- Land use.

Within the County of Los Angeles, many of these hydrologic variables are available as Geographic Information Systems (GIS) layers for hydrologic modeling. Using the available information, the rainfall isohyetal range for the 95th percentile and 2-year 24-hour storms were determined. Soil types were also classified using GIS data. A predetermined range of percent imperviousness values were used to characterize land uses found within the City of Santa Clarita. Two different flow path lengths were determined for a square and rectangular watershed with areas of 10, 20, 30, 40, and 50 acres. The rectangle was twice as long as it was wide. Table 1 contains the combinations of variables used in this analysis, along with the total number of models run for the 95th percentile and 2-year 24-hour storms.

Table 1 Sensitivity Analysis Combinations for 95th Percentile and 2-year 24-hour Storms						
LA County Soil Type	Land Use Imp.	Area	Length	Slope	95th Perc. 24-hr Rainfall	2-yr 24-hr Rainfall
#	(%)	(acres)	(ft)	(ft/ft)	(in)	(in)
20	1	10	1000	0.01	1.60	2.20
64	5	20	1500	0.05	1.80	2.40
91	10	30	2000	0.10	2.00	2.60
93	15	40	2500	0.15		2.80
97	20	50	3000	0.2		3.00
98	30					3.20
99	40					
100	50					
101	75					
115	100					
Total Combinations					37,500	75,000

**Impact Analysis of Proposed National Pollutant Discharge Elimination System Permit
Hydromodification Criteria
City of Santa Clarita**

Combining the hydrologic characteristics within the City of Santa Clarita resulted in 37,500 combinations for the 95th percentile 24-hour storm event. The combinations resulted in 75,000 unique combinations for the 2-year 24-hour storm due to the greater range of rainfall isohyets. Figures 1 and 2 illustrate the rainfall isohyets for the 95th percentile and 2-year 24-hour storm events, and the soil types within the City of Santa Clarita.

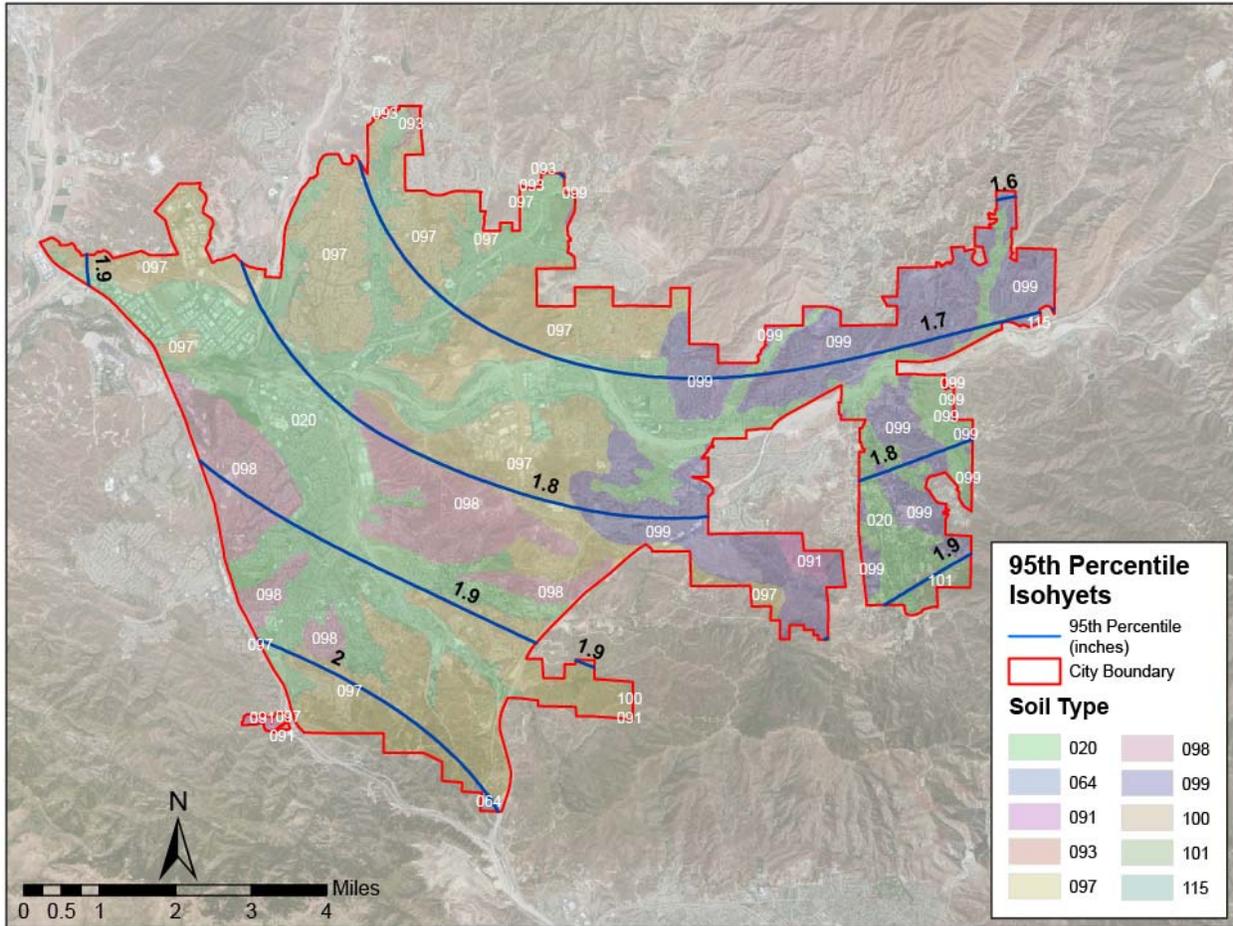


Figure 1. 95th Percentile Isohyets in the City of Santa Clarita

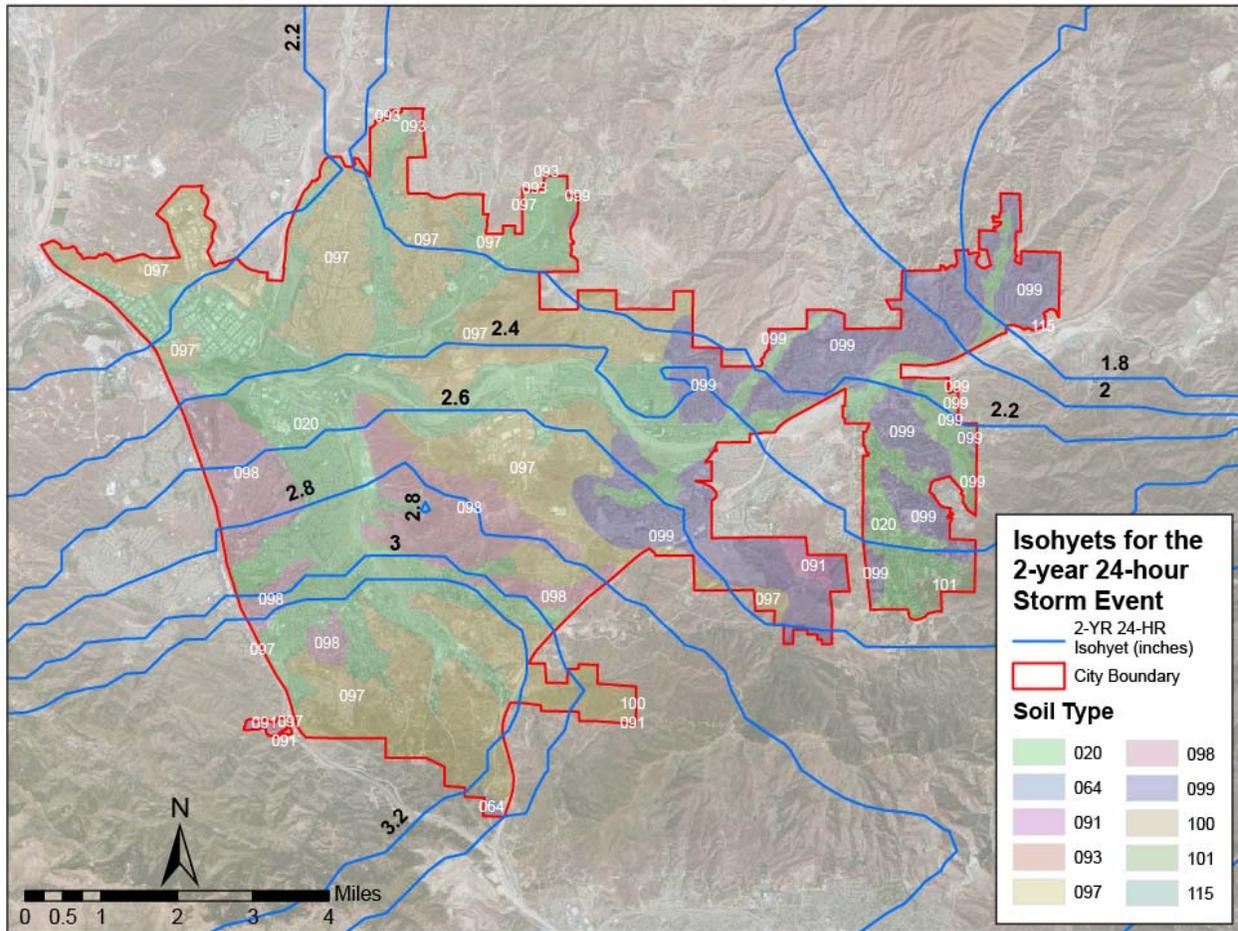


Figure 2. Isohyets for the 2-year 24-hour Storm Event in the City of Santa Clarita

After running each combination of hydrologic variables, the data sets were evaluated. Evaluation of the NPDES Permit criteria requiring full storage of runoff from the 95th percentile 24-hour storm resulted in some very interesting findings. Although the peak flow rates are influenced by area, rainfall intensity, slope, flow path length, imperviousness, and soil types, volumes are only influenced by rainfall totals, percent impervious, and soil types.

In an effort to provide analysis for all ranges of small watershed combinations, total runoff volume was divided by area. The results showed that only imperviousness and intensity affected unit volume runoff for the ranges of variables within the City. Dividing the volume by area resulted in a ratio we call the Unit Volume Factor (UVF). This results in a factor with a unit of feet, that when multiplied by the study watershed area, results in acre-feet of storage required. For all combinations, the ratios were consistent with very little variation by soil type, flow path length, and slope. This made use of these factors very powerful. They apply to all watershed shapes, sizes, and locations, as long as the planned imperviousness and rainfall isohyets are known.

The same standardization to develop UVFs was conducted on the 2-year 24-hour model combinations, which showed the same results. The ratios were consistent for each soil type, watershed area, length, and slope combination and only varied with rainfall intensity and percent imperviousness. The resulting UVFs are provided in Table 2.

Table 2. Runoff Volume/Acre Based on Rainfall Isohyets (Unit Volume Factor)									
Percent Imperv.	95th Perc. Isohyets (in.)			2-year 24-hour Isohyets (in.)					
	(%)	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00
1.0	0.015	0.017	0.020	0.022	0.025	0.027	0.030	0.033	0.035
5.0	0.019	0.022	0.025	0.0274	0.030	0.033	0.036	0.040	0.043
10.0	0.024	0.028	0.031	0.0346	0.038	0.042	0.045	0.049	0.053
15.0	0.029	0.033	0.038	0.0416	0.046	0.050	0.055	0.059	0.063
20.0	0.035	0.039	0.044	0.0488	0.054	0.058	0.063	0.069	0.074
30.0	0.045	0.051	0.057	0.0632	0.069	0.075	0.081	0.088	0.094
40.0	0.056	0.063	0.070	0.0774	0.085	0.092	0.099	0.107	0.114
50.0	0.066	0.075	0.083	0.0916	0.100	0.109	0.117	0.126	0.135
75.0	0.092	0.104	0.116	0.1272	0.139	0.151	0.162	0.174	0.186
100.0	0.118	0.133	0.148	0.1628	0.178	0.192	0.207	0.222	0.237

Table 2 shows ratios that can be used for any size watershed to determine the total volume of runoff that must be stored based on the 95th percentile rainfall. The rainfall isohyets for the 2-year 24-hour are also provided since one of the criteria for use of the 2-year 24-hour storm requires matching pre-and post-construction volumes. Use of the UVFs with the 2-year 24-hour storm criteria require the difference between pre- and post-development UVFs. The Modified UVF (MUVF) is derived by subtracting the pre-development UVF from the post-development UVF. An example calculation is provided below for both criteria:

Watershed Characteristics

Watershed Size: 40 acres
 95th percentile 24-hour Isohyet: 1.60 in.
 2-year 24-hour Isohyet: 2.20 in.
 Pre-Construction Imperviousness: 5%
 Post-Construction Imperviousness: 75%

Storage Volume Requirements

95th percentile UVF (Table 2, column 2): 0.092 ft
 Required Detention Volume (Area*Unit Runoff) = 0.092 ft * 40 acres = **3.68 ac-ft**

Pre Construction 2-year 24-hour UVF (Table 2, Column 5): 0.0274 ft
 Post-Construction 2-year 24-hour UVF (Table 2, Column 5): 0.1272 ft
 Modified UVF = Post-Construction UVF – Pre-Construction UVF = MUVF: (0.1272 – 0.0274) = 0.0998
 Required Detention Volume (Area*Unit Runoff) = 0.0998 ft * 40 acres = **3.99 ac-ft**

The ratios in Table 2 are linear and so linear interpolation between the values is acceptable. A chart is provided in Figure 3 to allow graphical use of the data sets for comparing alternatives. Figure 3 shows the UVF versus the percent imperviousness relationship for all of the isohyetal combinations required in Santa Clarita by the proposed NPDES hydromodification provisions.



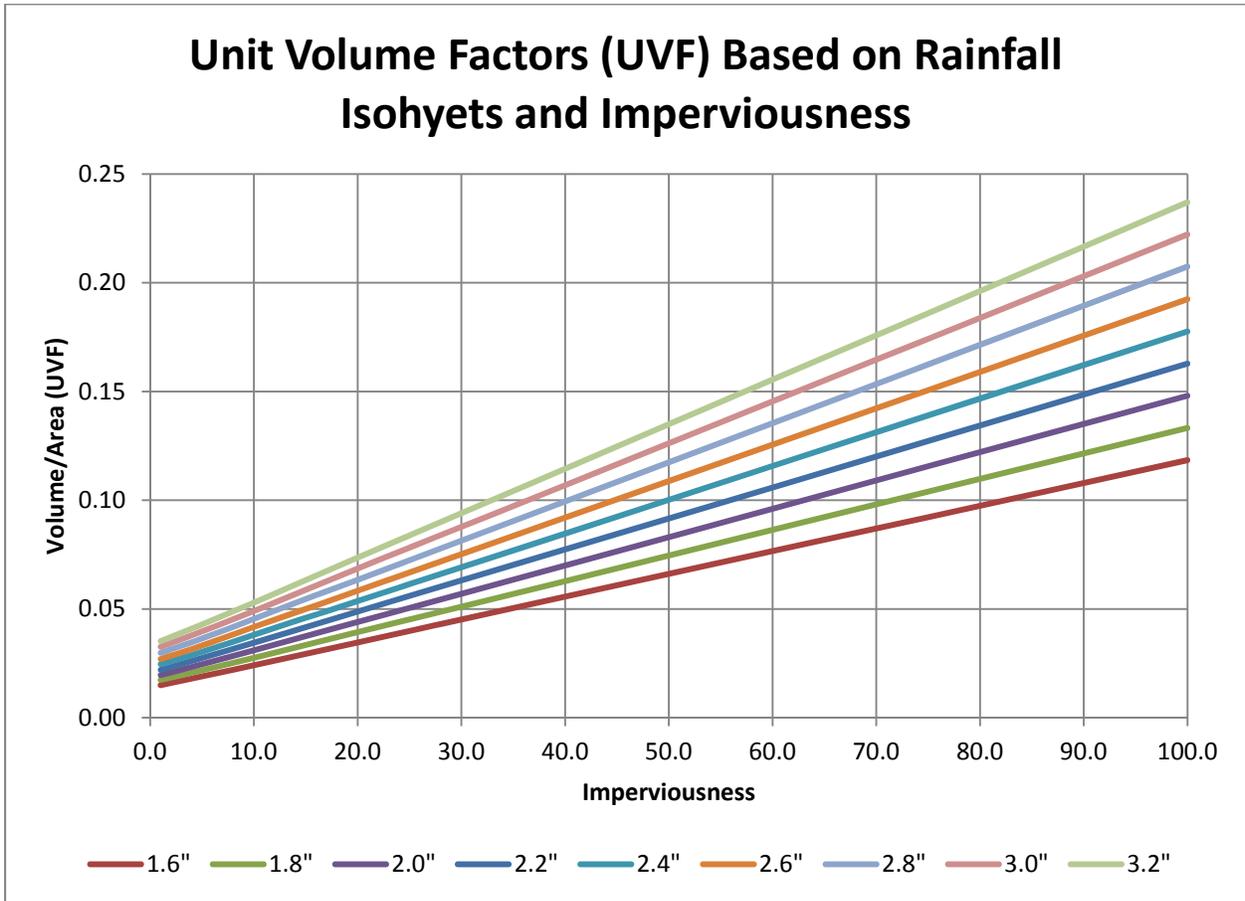


Figure 3. Unit Volume Factors for Hydromodification Analysis

Although larger watersheds have more locations for in-channel storage and time delays, they also have larger variations in possible conditions. Analysis showed that the method is consistent for a range of smaller watersheds. Scaling the result to larger watersheds is somewhat conservative, but gives a good sense of the volumes needed for detention of stormwater to meet hydromodification criteria.

2.2 Analysis of Storage Area Footprint Size

Use of the UVF criteria allows a quick determination of the storage volume required by the proposed hydromodification criteria in the pending NPDES Permit. The footprint of the area to be used for this storage, whether it is a detention pond, or a below ground infiltration chamber, depends on the depth of storage and infiltration rates. The footprint area of the storage can be determined by dividing the required storage volume by depth. For this analysis, we assume that facilities will be sited in soils that drain well and no continuous modeling of back-to-back rainfall events is modeled. This is consistent with the proposed language in the pending NPDES Permit.

The UVF has units of feet. When divided by a proposed storage depth, the result is the percentage of the watershed which must be used for stormwater storage. The example from above is carried through to provide consistent numbers.

Required Storage Volume

95th Percentile = 3.68 ac-ft
2-year 24-hour = 3.99 ac-ft

Required Storage Area Footprint (5-foot Depth)

Area_{95th} = 3.68 ac-ft / 5 feet = 0.736 ac
Area_{2-yr} = 3.99 ac-ft / 5 feet = 0.798 ac

Percent of Development Watershed

95th Percentile (UVF / Depth) = (0.092 ft / 5 feet) = 0.0184 = 1.8%
2-year 24-hour (MUVF / Depth) = (0.0998 / 5 feet) = 0.01996 = 2.0%

The values in Table 3 provide a quick reference for ratios of the watershed area needed for storage based on depth of storage. For the 2-year 24-hour storm analysis, the pre-development value will need to be subtracted from the post-development value. As can be seen in the table, the ratios range from 0.002 to 0.119, representing the fact that the rainfall depth and depth of storage will result in as little as 0.02% of the watershed up to 12% of the watershed being used for storage of stormwater based on the criteria proposed in the pending NPDES Permit.

**Impact Analysis of Proposed National Pollutant Discharge Elimination System Permit
Hydromodification Criteria
City of Santa Clarita**

Table 3. Storage Footprint Area as a Ratio to Watershed Area Based on Storage Depth									
Percent Impervious	Storage Ratio with a 2' Depth								
	95th Percentile Isohyets (in.)			2-year 24-hour Isohyets (in.)					
	(%)	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00
1.0	0.008	0.009	0.010	0.011	0.012	0.014	0.015	0.016	0.018
5.0	0.010	0.011	0.012	0.014	0.015	0.017	0.018	0.020	0.021
10.0	0.012	0.014	0.016	0.017	0.019	0.021	0.023	0.025	0.027
15.0	0.015	0.017	0.019	0.021	0.023	0.025	0.027	0.029	0.032
20.0	0.017	0.020	0.022	0.024	0.027	0.029	0.032	0.034	0.037
30.0	0.023	0.026	0.029	0.032	0.035	0.038	0.041	0.044	0.047
40.0	0.028	0.031	0.035	0.039	0.042	0.046	0.050	0.053	0.057
50.0	0.033	0.037	0.042	0.046	0.050	0.054	0.059	0.063	0.068
75.0	0.046	0.052	0.058	0.064	0.070	0.075	0.081	0.087	0.093
100.0	0.059	0.067	0.074	0.081	0.089	0.096	0.104	0.111	0.119
	Storage Footprint with a 5' Depth								
1.0	0.003	0.003	0.004	0.004	0.005	0.005	0.006	0.007	0.007
5.0	0.004	0.004	0.005	0.005	0.006	0.007	0.007	0.008	0.009
10.0	0.005	0.006	0.006	0.007	0.008	0.008	0.009	0.010	0.011
15.0	0.006	0.007	0.008	0.008	0.009	0.010	0.011	0.012	0.013
20.0	0.007	0.008	0.009	0.010	0.011	0.012	0.013	0.014	0.015
30.0	0.009	0.010	0.011	0.013	0.014	0.015	0.016	0.018	0.019
40.0	0.011	0.013	0.014	0.015	0.017	0.018	0.020	0.021	0.023
50.0	0.013	0.015	0.017	0.018	0.020	0.022	0.023	0.025	0.027
75.0	0.018	0.021	0.023	0.025	0.028	0.030	0.032	0.035	0.037
100.0	0.024	0.027	0.030	0.033	0.036	0.038	0.041	0.044	0.047
	Storage Footprint with a 10' Depth								
1.0	0.002	0.002	0.002	0.002	0.002	0.003	0.003	0.003	0.004
5.0	0.002	0.002	0.002	0.003	0.003	0.003	0.004	0.004	0.004
10.0	0.002	0.003	0.003	0.003	0.004	0.004	0.005	0.005	0.005
15.0	0.003	0.003	0.004	0.004	0.005	0.005	0.005	0.006	0.006
20.0	0.003	0.004	0.004	0.005	0.005	0.006	0.006	0.007	0.007
30.0	0.005	0.005	0.006	0.006	0.007	0.008	0.008	0.009	0.009
40.0	0.006	0.006	0.007	0.008	0.008	0.009	0.010	0.011	0.011
50.0	0.007	0.007	0.008	0.009	0.010	0.011	0.012	0.013	0.014
75.0	0.009	0.010	0.012	0.013	0.014	0.015	0.016	0.017	0.019
100.0	0.012	0.013	0.015	0.016	0.018	0.019	0.021	0.022	0.024



2.3 Analysis of Flow Rates, Velocities, and Duration Requirements

The 2-year 24-hour criteria for both small and large watersheds requires development to prevent changes to the volume, flow rate, velocities, and durations resulting from the change in land use from the pre-development to the post-development condition. These four criteria, along with channel bank and bed materials, and sediment transport through the system, determine the type of stream that forms. In an effort to prevent degradation of streams, many regulators are trying to maintain these four flow characteristics common for most storm events. The 2-year 24-hour storm has been selected as a threshold storm for this type of analysis.

By requiring that all four flow characteristics be held constant between the pre- and post-development condition, nothing can be changed or varied. The key to all of this is volume. Channel and detention hydraulics can be changed to ensure that flow rates and velocities for the 2-year 24-hour event remain constant, but this requires that the excess volume be stored and flow durations must be controlled by drawdown and infiltration. Since the volume must be controlled, the other variables are less significant. Storage volume becomes the key and the impact to storage volume has been detailed above.

3. Stream Classification Systems, Hydrologic Models, and Erosion Potential Analysis

The second task was to evaluate the Erosion Potential (E_p) method of analyzing hydromodification impacts. This effort is intended to identify any issues related to the use of this methodology in determining the impacts of hydromodification for new development or redevelopment projects. The methodology requires classifying a stream, developing a continuous hydrologic model to assess bed shears and work, and comparing pre- and post-development flows from the hydrologic model to determine if the work done on the stream remains the same.

Physical process modeling aims to establish relationships between impervious cover, runoff patterns, and channel response based on field observations of changes in channel form over time. These field observations are used to derive mathematical relationships that can be used to predict channel response to changes in land use practices.

Geomorphic analysis of stream systems often begins with classifications of stream geomorphology. There are several methods of classifying streams which are intended to define stable and unstable reaches and stream types. These approaches include the Montgomery/Buffington, Rosgen, Whiting and Bradey, Simon, and others. These methods differ from each other and provide an analysis of the stream at the time of investigation. The methods do not provide information on how to correct instabilities in the stream system, only to evaluate its current state.

Once the stream has been classified, it can be roughly assumed to be stable or unstable. This is a key element in whether the E_p method should even be applied. If a stream is unstable, the E_p method does not provide a hydromodification solution. It only prevents faster degradation due to the project. This will be explained below after a general description of the E_p method has been provided.

Erosion Potential is a geomorphic metric that has been used in a few studies in California, including the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and 2005 Southern California Coastal Water Research Project (SCCWRP) study titled, "*Effect of Increases in Peak Flows and Imperviousness on the Morphology of Southern California Streams.*"

The E_p represents the ratio of pre- and post-development erosive forces for a given stream type, expressed as:

$$E_p = W_{\text{post}}/W_{\text{pre}}$$

Where:

W_{post} = Cumulative erosive energy or work after development
 W_{pre} = Cumulative erosive energy or work before development

Chapter 3 of the SCVURPPP document on hydromodification provides the most detailed description of what is involved in determining the work done by the water on the stream bed materials. Figures 4 and 5 provide key information for understanding the E_p methodology. The erosive work is the summation of shear stresses above the critical bed shear or bank shear over a period of time. In order to determine these values, a continuous flow record is needed. In the case of streams without gages, a continuous hydrologic model such as Hydrological Simulation Program - FORTRAN (HSPF), Loading Simulation Program in C++ (LSPC), Storm Water Management Model (SWMM), or Hydrologic Engineering Center's Hydrologic Modeling System (HEC-HMS) must be run to generate a long term flow record for the existing pre-development condition and post-development condition.

The method assumes that the stream bed is currently stable. Stream stability in this case means that the incoming sediment loads equal the outflowing sediment loads from the study reach. The bed materials and sediment transport loads are in equilibrium with the flow shear stresses over time for the expected range of flow rates, volumes, and durations.

As flow rates, velocities, volumes, and durations change due to changes in land use, the shear stresses on beds and banks are increased through higher velocities, or longer flow durations. If the E_p Ratio is less than or equal to 1, post-development shear stresses are less than pre-development shear stresses. If the ratio is greater than 1, post-development shear stresses are greater than pre-development shear stresses.

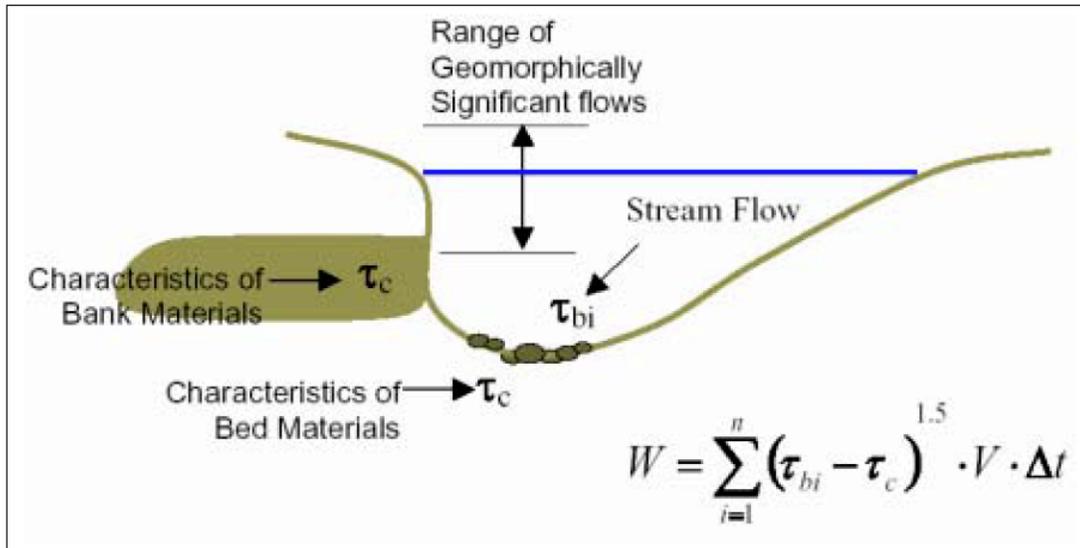


Figure 4. Key Elements of E_p Methodology

$$W = C \cdot \sum_{i=1}^n (\tau_{bi} - \tau_c)^e \cdot V \cdot \Delta t \quad (1)$$

Where:

- W = index of total effective work done over the length of flow record per square foot of bed or bank (ft-lbs/sq-ft).
- C = a constant to convert equation to dimensional or dimensionless units of work, dependent on exponent e
- n = number of flow records in a histogram of flows
- τ_c = critical shear stress that initiates bed mobility or shear erosion of the toe of streambanks (lbs/sq-ft)
- τ_{bi} = applied hydraulic shear stress, computed as $\rho g d S$ (lbs/sq-ft), on the bed or toe of banks and determined using the central channel conditions
 - d = depth of water (ft) S = longitudinal slope (ft/ft)
 - g = gravity constant (ft/sec²) ρ = density of water (lb/ft³)
- e = exponent that captures the exponential rise in stream power with flow (ranges between 1 and 2.5, estimated as 1.5 for watersheds in Santa Clara Basin based on field measurements)
- V = mid-channel velocity (ft/sec)
- Δt = duration of flow (in seconds) for each flow record

Figure 5. Definitions of Key Parameters in E_p Methodology

If a stream is unstable, indicating imbalances between flow rates, volumes, durations, and sediment delivery and transport, channels will aggrade or degrade due to bank and bed erosion or deposition. Nothing within the proposed hydromodification analysis accounts for the pre-construction stability of the channel.

The use of the E_p method for evaluating stream stability requires a sound understanding of hydrologic principles, continuous modeling, hydraulics, and sediment transport. One of the key elements that the method does not account for is the changes in sediment supply to the project stream segments if debris basins or debris retaining inlets are part of the project. This may not have been an issue in Santa Clara Valley, but these features are part of the design requirements within Los Angeles County and most of Southern California.

The use of continuous models for watersheds smaller than 100 acres, and even larger watersheds is very costly. Lack of data for calibration of these models renders them less useful for true evaluation and more of a qualitative tool rather than a quantitative tool. SCVURPPP reduced this effort by developing the Bay Area Hydrology Model (BAHM). No similar, regionally simplified model or tool exists for Southern California.

The E_p method is one of many methods for evaluating stream stability. It is not widely used and appears to be a method that is being advocated by a very select few who understand the method and have used it in certain studies. The limitations of this method in creating stable streams, or in evaluating changes to sediment supply, limit its usefulness for hydromodification analysis.

The proposed NPDES Permit language should structure the hydromodification policy in a way that is tied to the size and complexity of the development. The key aspects of analysis should consider changes to hydrologic, hydraulic, sediment supply, and sediment transport mechanics within the stream system. For example, if a 50-acre development is placing a debris basin that controls several square miles of a watershed that supplies sediment, the impacts to sediment supply should be considered. If reduced supply is expected, changes to the stream hydrology and hydraulics must be considered if a natural system is to remain. Removing the sediment supply would change the system dynamics.

The E_p method is a tool to assess changes to stream systems, but it is not the only tool and lacks some fundamental inputs while requiring other complex inputs that are not justified in many cases due to lack of data.

4. Proposed Exemptions to Hydromodification Controls

Several exemptions to the hydromodification requirements are provided in the March 21, 2012, working proposal of the permit provisions related to the MCMs for New Development and Redevelopment Projects. Projects may be exempt from the implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to present and future beneficial uses of Natural Drainage Systems are unlikely:

1. Projects that are replacement, maintenance, or repair of an existing flood control facility, storm drain, or transportation network.
2. Redevelopment projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions.
3. Projects that have any increased discharge directly or via a storm drain to a sump, lake, area under tidal influence, into a waterway that has a 100-year peak flow (Q_{100}) of 25,000 cfs or more, or other receiving water that is not susceptible to hydromodification impacts.
4. Projects that discharge directly or via a storm drain into concrete or otherwise engineered (not natural) channels (e.g., channelized or armored with rip rap, shotcrete, etc.), which, in turn, discharge into receiving water that is not susceptible to hydromodification impacts.

The exemptions to the proposed hydromodification controls make sense in restricting controls on systems that do not experience hydromodification, or that have already been developed. Exemption No. 3 may require more definition. All drains within Santa Clarita drain to the Santa Clara River, which in turn drains to the ocean. Based on a study conducted by the Ventura County Watershed Protection District in 1994, the 100-year peak flow at the Lang Station upstream of the City of Santa Clarita is approximately 15,000 cfs. The 100-year peak flow in the Santa Clara River at the Old Road is approximately 35,000 cfs. The 100-year peak flow at the County Line is approximately 65,000 cfs. This indicates that many projects within the City that discharge directly to the river would be exempt from hydromodification controls.

5. Alternative Approach to Hydromodification Permit Language

Hydromodification is a complex issue related to both physical changes to the stream channel, and chemical changes to the water. The proposed permit policy should address physical changes to the stream and nearby land that will impact stream characteristics. The purpose of the hydromodification policy should be to stabilize streams to allow beneficial use and natural stream function, not necessarily preserve existing conditions, which may be unstable, and poor quality streams. Creating stable streams with natural features will create the natural habitats and ecosystems that the Regional Board is trying to protect.

The hydromodification policy should address:

1. Prevention of increases to dry-weather flow patterns due to nuisance runoff and excessive irrigation.
2. Preservation of pre-development runoff conditions for peaks, volumes and flow durations unless changes to sediment supply are also anticipated.
3. Preservation of sediment balance in the stream to keep the stream in dynamic equilibrium.
4. Preservation of riparian corridors using buffer zones between the stream and the development to protect the stream ecology.

If the stream is unstable, or development is going to change flow rates, velocities, durations, volumes, and sediment supply and transport, the stream should be engineered for the new conditions to create a stable and healthy stream. The hydromodification policy should be a tiered system, where bigger developments require more complex studies. For discussion, the following possibilities for tiers are suggested:

Tier 1 – Discharge to an existing storm drain

This tier requires only hydrologic studies. Tier 1 drains flow directly from the development into a publicly owned and maintained concrete pipe, box, or channel system with adequate hydraulic capacity which does not discharge into a natural or soft-bottom channel.

1. No change to peak flow, volume, or duration used for design of the drain. (See exemptions in Section 4).

Tier 2 – Small Developments (20 acres or less)

This tier requires hydrologic studies and may require sediment yield analyses if debris retaining inlets (DRIs) are installed. Tier 2 drains collect water from a development into drains or natural watercourses. These drain to larger natural watercourses. The requirements for Tier 2 include the following:

1. The volume of dry-weather runoff should not change between pre- and post-development. This will require the use of BMPs to prevent the changes to dry-weather flow. This regulation, like SUSMP, is to help meet future compliance with Total Maximum Daily Loads (TMDLs).
2. Addition of DRIs requires analysis and comparison of the sediment yield in the receiving watercourse and the tributary at the confluence.
3. Preserve or create stream buffers.

Mitigation could be required if the effective imperviousness increases by more than a given percent or if the change in sediment yield from the development is greater than a specific percent.

Tier 3 – Medium Developments (20 to 99 acres)

This tier requires hydrologic studies and sediment yield analyses, and may require channel stability analyses if DRIs and debris basins are installed. Tier 3 drains collect water from a development into drains or natural watercourses that drain to larger natural watercourses. The requirements for Tier 3 include Tier 2 studies, plus the following:

1. No change to 5-year peak flow, volume, or duration.
2. Addition of DRI or debris basins requires analysis and comparison of the sediment yield in the major watercourse and the tributary at the confluence. If the change is greater than 10% of the total sediment for the receiving system, a Phase 1 stream stability analysis is required for the receiving stream.

Tier 4 – Large Developments (100 acres or larger)

This tier requires hydrologic studies that may include a continuous hydrologic model, sediment yield analysis, receiving channel stability analysis, and may also require sediment transport modeling. Tier 4 studies must also meet the criteria for Tiers 2 and 3.

1. No change to 10-year peak flow or volume.
2. A Phase 1 stream stability analysis is required for the development watercourse.
3. Sediment yield analysis for the development watercourse and the receiving watercourse are required. If the yield to the next order watercourse is changed by more than 10%, a stream stability analysis for the next order stream at the sections near the confluence is required.
4. Major changes to channel configurations, slopes, sediment supply, etc. will require sediment transport modeling.

If it is not possible to prevent changes in hydrologic variables, detailed engineering analysis must show that proposed development results in a stable channel that functions as the natural stream being impacted would have behaved (perennial, ephemeral) and which supports native habitats and species.

6. Conclusions

1. The 2-year 24-hour rainfall isohyets are much larger than the 95th percentile 24-hour isohyets. For all watersheds smaller than 50 acres, the 95th percentile method will be preferred unless the increase in imperviousness is small.
2. The 2-year 24-hour event criteria requires preventing post-construction flow rates, velocities, volumes, and durations from exceeding the pre-developed conditions for the large and small watershed categories. The only way to accomplish this is to capture and infiltrate the excess volume. Without the infiltration, at least one of the other flow characteristics has to change, which is not allowed by the proposed permit language. This reduces the 2-year 24-hour criteria to an infiltration criterion requiring storage and infiltration of the difference in volume between the pre- and post-construction runoff.
3. The discussion of substantiating conditions by hydrologic modeling acceptable to the Executive Officer of the Regional Board must be clarified. Which models are acceptable and for what size watershed? Use of continuous models in watersheds, without gages for model calibration, requires some method of calibration to ensure that flow rates, volumes, or durations are not over or underestimated.
4. These hydrologic modeling methods should seek to meet with hydrologic models used for studies within the regulated counties to prevent extra costs associated with running several hydrologic models for SUSMP, Storm Water Pollution Prevention Plans (SWPPP), TMDL, and flooding analyses.
5. Infiltration of the water from the small watershed of the 95th percentile rain may have unintended consequences as more development occurs. Preventing any runoff from 95 percent of 24-hour storm events may actually change stream flow characteristics. It is better to retain the difference, thus retaining the hydrologic response of the streams related to frequent rainfall events.
6. The study produced two key sets of information for predicting impacts to specific watershed development. The Unit Volume/Acre data shows how much storage volume is required for a watershed based on the 95th percentile and 2-year 24-hour storm criteria. For use with the 95th percentile criteria, the Unit Volume/Acre Factor (UVF) is simply multiplied by the area of the watershed under consideration. For the 2-year 24-hour criteria, subtracting the Pre-Developed UVF from the Post-Developed UVF provides the Modified UVF (MUVF) to multiply by the watershed area, resulting in the required storage volume.
7. The required surface area of the storage facility to meet the 95th percentile criteria ranges from 1 to 7 percent of the project area. The range depends on the depth of storage which ranged from 2 to 10 feet in this study. Other percentages can be easily calculated. The UVF multiplied by the project area and divided by the depth of storage ($UVF \times Area / Depth$) results in the acres of needed surface area.
8. The required surface area of the storage facility to meet the 2-year 24-hour criteria depends on the pre- and post-development imperviousness. Tables are provided to assist in determining the UVF for the various isohyets and imperviousness combinations. Using the most extreme differences of a 1 percent pre-development to 100 percent post-development condition results in a required storage footprint that ranges from 1 to 10 percent of the project area. The range depends on the depth of storage which ranged from 2 to 10 feet in this study. Other

percentages can be easily calculated. The MUVF multiplied by the project area and divided by the depth of storage ($MUVF * Area / Depth$) results in the acres of needed surface area.

9. The E_p method requires the use of continuous hydrologic models. The use of continuous models for watersheds smaller than 100 acres, and even larger watersheds, is very costly. Lack of data for calibration of these models renders them less useful for true evaluation and more of a qualitative tool rather than a quantitative tool. SCVURPPP reduced this effort by developing the BAHM. No similar, regionally simplified model or tool exists for Southern California. SCVURPPP also exempted certain watersheds from the analysis if they met specific criteria. No such provisions are included in the proposed NPDES Permit language.
10. The E_p method is one of many methods for evaluating stream stability. It is not widely used and appears to be a method that is being advocated by a very select few who understand the method and have used it in certain studies.
11. The requirement to use a stream classification system should specify which classification systems are appropriate so that all studies are conducted using approved methodologies.
12. The proposed permit provisions do not consider changes to sediment supply, which can significantly alter stream stability and result in hydromodification even if stream flow characteristics are maintained. Where sediment supply is altered, a system may require engineering to create a balanced natural system.
13. The proposed NPDES Permit language should structure the hydromodification policy in a way that is tied to the size and complexity of the development, changes to hydrologic, hydraulic, sediment supply, and sediment transport mechanics within the stream system. The E_p method is a tool to assess changes to stream systems, but it is not the only tool and lacks some fundamental inputs while requiring other complex inputs that are not justified in many cases. An example of a tiered structure is provided in this report.

Document Name:

Draft NPDES Permit June 2012

Agency/Reviewer: City of Santa Clarita

Comment No.	Doc. Reference		Comments	Author Response
	Page	Section		
1	15	C - ROWD	Please clarify why the ROWD was insufficient and provide a copy of the USEPA Interpretative Policy Memorandum of Reapplicaton referenced	
2	Attachment B	HUC 12	There are eight HUC 12 boundary areas for the monitoring program in the Santa Clara River that affect the City, which makes monitoring cost prohibitive; please allow for some HUC 12 areas to be eliminated if there is sufficiently similar land use	

3	17, 19, 21, 26, 38 (into and from)	Non SW	Please add "to" instead of "through" or "from" MS4. It appears legal citation 402 (p) (B) (3) (iii) is juxtaposed [should be 402 (p) (3) (B) (iii)]. Appears should be (2) instead of (3) [(ii) says "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers"]
4	17	F	What is the Regional Water Board Watershed Management Initiative? Please provide a copy or link.
5	L-2 Attachment	3.a - c	Please utilize the table from the TMDL and insert here. Do not interpret different compliance days based on weekly monitoring. Allow permittees to evaluate and propose based on CIMP or IMP. Please add that we have load based compliance option as per the TMDL.
6	20	Table 6	Please remove table - confusing and seems to assume all reaches have all beneficial uses. List the uses by watershed if necessary to list, but do not assign the uses to all bodies of water from all outfalls
7	21	303(d) list	unable to locate 122.44. (d) (1) (vii) (B); please verify

8	22	commingled	unable to locate 40 CFR 122.26 a 3 vi, please verify	
9	23	interagency	Please remove language. Cities do not have authority over other agencies' discharges.	
10	23	Table 7	Please remove table - confusing and seems to assume all reaches have all beneficial uses. List the uses by watershed if necessary to list, but do not assign the uses to all bodies of water from all outfalls	
11	24	Q	This is an unfunded state mandate. Please provide justification (see comment letter).	
12	25	R	Please show this exceeds federal standards through stricter interpretation of rules than is required under the Clean Water Act.	

13	28	III. A. 2. b	Permitting and monitoring system excessive, requires all discharges to be monitored and includes thresholds, monitoring and permitting all discharges is simply not possible	
14	29	III. B	Please change to include from MS4 directly to an ASBS	
15	31	III. 4.	This in conjunction with Table 8 essentially requires permittees to divert all the stormwater from dry weather flows to the sewer. This exceeds federal requirements and is economically infeasible. Permits will be cost prohibitive, and will result in the public bypassing the permit process. Establish more reasonable thresholds.	
16	32	III.6.	Any change to conditionally exempt discharge categories should be subject to public comment/permit reopener	
17	34	Table 8	Landscape irrigation with recycled water - please clarify what an applicable O&M plan is and the Irrigation Management Plan	

18	35	Table 8	Only require clean out of MS4 in areas with greater than one acre foot of discharge to allow for more manageable number of discharges to monitor	
19	37	V.3.a.	Footnote 22 has a citation that doesn't exist in 40 CFR; please verify the citation and clarify	
20	39	VI. A. 2. a. i	Controlling pollutants from construction and industrial activities is a state responsibility. This could be construed as a requirement that exceeds unfunded mandate thresholds. Please clarify here or in unfunded mandates why local governments being required to enforce state laws and being is not an unfunded mandate.	
21	39	VI. A. 2. a. vii. And viii.	Please remove. Cities are not responsible for other agencies' discharges. Agreements between the permittees and other agencies is at the discretion of City Councils.	
22	40	Vi. A. 3	Please remove language requiring cities to secure fiscal resources. A permittee's board is tasked with managing their budgets and fiscal resources.	

23	41	VI. A. 5	Please remove. Cities are already required to comply with the Freedom of Information Act and the Regional Board is not the enforcing agency	
24	41	VI. A. 6	Regional Board review - Please add if the Executive Officer choses to go before the Board, permittees should not be responsible for implementing or complying with those sections of the permit affected until such time as the issue has been resolved.	
25	42	VI. A. 7	Additional costs of monitoring are significant and we request this be noted here.	
26	43	VI. A. 14	Enforcement should include a provision that a permittee is not subject to the MMP and CWC fines if it is actively implementing an adaptive management/iterative approach through watershed management program and integrated monitoring plan. Please include the four step approach in the enforcement section	
27	44	VI.A.14. h	Trash TMDL should not be in enforcement section. Please delete and place in TMDL section only	

28	54-55	VI.C.6 a. and b.	Please define Jurisdictional versus Watershed	
29	54-55	VI.C.6 a. and b.	Please cross reference the adaptive management/iterative process to the enforcement section so that VI. A. 14 includes reference that if the adaptive management/iterative process is being followed, it is not a major violation and that MMP, fines, etc., will not be pursued.	
30	57	VI. D.2. iii	Please adjust so it reflects that it's acceptable if it's consistent with a city retention policy or specify a timeframe for records retention	
31	58	VI.D.2.v. b	Please make response time requirements for Regional Board staff and permittees the same	
32	72	VI. D.6.c.iii.1.b.ii	Biofiltration systems achieving enhanced nitrogen removal capability is in Attachment H, not I; there is no compelling reason to single out nitrogen for a special category of pollutant removal capability. There is no scientific evidence presented in the memo referenced in the footnote of Attachment H. There is no peer review to validate the claims in the two page memo. The memo is dealing with maximizing volume retention and has no reference to nitrogen; please remove this section and related requirements	

33	74	D.6.c.iv.1 and Table 11	<p>While a facility may be able to design a post construction stormwater BMP for an assumed amount of pollutant removal capability, a) and b) are written in such a way as to require the applicant to monitor the water quality from the site post construction, and as written, forever. The performance of a single BMP, or even a series of BMPs, cannot meet all the benchmarks in Table 11 all the time. The SWRCB has not established such a restrictive post construction BMP requirement. It is not practicable for cities to be responsible for monitoring water quality from potentially hundreds of sites during a storm event. Please remove Table 11, or rewrite to ensure that these are only design standards, not maintenance requirements, performance benchmarks, monitoring or operations standards that would require permittees to monitor hundreds of sites simultaneously during storm events.</p>	
34	75	D.6.c.iv.3	<p>Please remove the cause and contribute language, so that it does not apply to individual property sites. This is not practicable, as the permittees do not have control over the post construction activities of the residents or businesses on these sites. While inspections and enforcement are part of this permit, the idea of monitoring individual sites for stormwater runoff is simply not workable.</p>	
35	77 - 78	D.6.c.v.d.i - iii	<p>Please allow permittees 24 months as 180 days would not be sufficient to model and provide all the elements outlined in this section. The model itself is cost prohibitive and difficult to callibrate due to the unique characteristics of the Santa Clara River. Specifically, the Santa Clara River is already sediment starved due to historically high volumes of sediment transported from the extensive sand and gravel desoposits in the local mountain ranges being constrained. Any hydromodification plans should be tied directly with Watershed Plans. Technical evalutation of the hydromodification section is attached. Please retain the existing permit language until such time as a final hydromodification policy is completed and Santa Clara River study is complete</p>	

36	79	D.6.c.v.d.vii	Please remove annual reporting requirement which is a substantial evaluation of all treatment and post construction BMPs that will require site specific water quality monitoring. The SWRCB in the construction permit acknowledged this is not feasible, and the monitoring provisions were overturned
37	84	D.7.d.i.3	Erosion potential analysis for under an acre is unnecessarily strict and will require expertise these types of project proponents do not have. Please remove this requirement.
38	86	D.7.d.h.ii.8	Please remove the requirement for permittees to verify Fish and Game permits and other permits issued by state agencies. This is only appropriate for planning approvals or grading permits, not building permits.
39	95	D.8.d.i	Please remove the cause or contribute language from inventory language to allow for dealing with overall implementation
40	99	D.8.g.ii.5 & 6	Please remove the partnering information. It is unclear who the partners are and what the requirement is. Also, please clarify what "verifiably implement" means. Is this beyond what is in annual report?

41	102	D.8.h.vii	Please clarify what is meant by "when outfall trash capture is provided, revision of the schedule is required"	
42	103 - 104	D.8.h.x	<p>For permittee owned treatment BMPs, the residual water definition is referred to in the definitions in Attachment A, but no such definition is in Attachment A. Regarding performance, not all treatment BMPs that have been installed to date are designed to treat for all the pollutants listed. Please clarify these standards do not apply to existing BMPs (i.e. catch basin inserts, CDS units). Not all flows can be discharged to a sewer due to capacity, geography and areas where no sewage treatment plants exist. It's unclear why this standard is here, when the SUSMPs and TMDLs clearly define what is being treated. The performance standards for post construction BMPs and their monitoring here should be deleted, as it's covered in other areas.</p>	
43	106	D.8.k.ii	Please allow for contractors to self certify if they are under contract obligation to understand all these requirements. It's an additional cost to the City to have to pay a contractor to sit in a class to learn something they are already under contract to understand.	

44	108	D.8.b.v	<p>Due to the extreme variability of urban runoff, a permittee could easily find single violations or one off discharges from the storm drain system. Many times, the evidence is dried up on the surface and there is no way to tell where the source of the problem is. The way this is written, a permittee would be responsible for diverting this outfall to the sewer or build a treatment device because of one stray event. Not only is this unfair enforcement of the law, this would easily overwhelm most budgets with one or two outfalls. In any case, planning a treatment device or diversion takes months to design and plan for, not 30 days. This requirement should be eliminated.</p>	
45	108	D.9.c.iv	<p>What are formal enforcement and formal records? How is this different from progressive enforcement?</p>	
46	110	D.9.f	<p>Illicit Connection Education and Training - having this in a separate section is duplicative and confusing. Please amend the public employee training section with information on ICID. Please also revise contractual services to include documentation from the contractor that they have trained their employees.</p>	
47	111	E.1.a - d	<p>Please include WQBELs as BMP based.</p>	

48	111	E.2.a	Please revise to ensure compliance can be achieved by implementing BMPs using an iterative approach through implementation of the watershed management program even if final WLA are exceeded.
49	112	E.2.b.v.3	CWC 13178 only deals with bacteria - please clarify how this applies to any other pollutant
50	112	E.2.c	Please add receiving water limitations with iterative approach consistent with the CASQA language; as long as the permittee is following BMPs addressed in a watershed management plan the permittee shall be in compliance as in E.2d.1.4
51	114	E.2.e	Please add receiving water limitations with iterative approach consistent with the CASQA language; as long as the permittee is following BMPs addressed in a watershed management plan the permittee shall be in compliance as in E.2d.1.4
52	116	E.4.a	This statement should be removed until such time as the Regional Board revisits all the studies that permittees have developed, including natural source exclusions and other studies that explain sources that are outside permittees control

53	123	E.5	Please ensure the monitoring and reporting requirements are cross referenced; also please add monitoring should be part of an integrated monitoring plan
54	L2	D.3	Please revert to the original Tables for WLA in the Santa Clara River Bacteria TMDL, do not interpret or calculate daily or weekly sampling, especially without providing the calculations for such interpretation. Use the exact tables 7-36.2 and.3 in the TMDL BPA for this section. Also clarify that there is a load based option in the TMDL.
55	overall	overall	In the standard provision, please add a spending cap. Recently, the US Conference of Mayors suggested that, nationwide, permittees should be found in compliance if the community has spent the equivalent of 2% of the household median income or if the state and/or federal government cost shares infrastructure retrofits 50/50 even if they are exceeding final WLA, MALs or other numeric standards as part of the iterative process.
56	attachments L - K	overall	Please reiterate that compliance can be BMP based using the watershed management program implemented in an iterative approach
57	page 40	Fiscal Resources	Regarding page 40 item 3, Fiscal Resources, this section appears to violate State Constitution Article XVI, section 18. In particular item a. states "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order". Please clarify the Regional Board authority to require the action in the Fiscal Resources section on page 40 in the draft permit.



City of Santa Monica
1685 Main Street, Room 209
Santa Monica, CA 90401

July 23, 2012

Mr. Ivar Ridgeway
Chief, Storm Water Permitting
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

RE: COMMENTS ON DRAFT NPDES PERMIT: TENTATIVE ORDER NO. R4-2012-XXX WASTE DISCHARGE REQUIREMENTS FOR MS4 DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

Dear Mr. Ridgeway:

The City of Santa Monica (City) appreciates the opportunity to provide comments and recommendations to the Los Angeles Regional Water Quality Control Board (Board) on the draft tentative order for MS4 discharges in the Los Angeles region.

As you know, over the years the City has been a strong and consistent partner with the Board on many issues. The City and the Board share a long held position that discharges need to be monitored and controlled. Regionally, the City has been a leader in dealing with waste discharges. The City continues to believe that waste discharges need to be reduced to preserve Santa Monica Bay and other water resources.

Although the City is supportive of the many provisions that provide for a strong and effective stormwater discharge permit, the City's disagrees that allowing only 31 business days to review a complete 500-page draft of the permit is adequate time for a responsible public agency to perform a comprehensive evaluation of the requirements, identify the interactions between the different provisions, assess the financial and organizational impacts, determine the legal exposures, certify our legal authority to enforce the requirements, present findings and obtain direction from our elected officials, and finally formulate a complete vetted collection of comments.

Expecting this to be accomplished in such a short time frame is unreasonable and we urge the Board to reconsider our earlier request for a 180-day time extension to the review process so as to ensure a complete and thoughtful review of the proposed permit provisions.

In the interim, we have listed our comments to date in the attached Exhibit A. This list is not complete given the short review time. The City reserves the right to include other comments as it further reviews the proposed NPDES permit. Additionally, the City of Santa Monica supports many of the draft permit comments as submitted to date by the LA Permit Group (LAPG) and those that are forthcoming in the LAPG comment letter. They are incorporated into our comments by this reference.

The City highlights its main concerns as follows:

The Receiving Water Limitation provisions expose the City to counterproductive third party lawsuits and Board enforcement actions.

The City of Santa Monica prides itself as a steward for environmental protection engaging in sustainable practices to protect our water bodies. The City has long been touted for its implementation of a proactive and pioneering storm water management program. The requirements in our urban runoff ordinance have been identified as some of the most aggressive in the region. In addition, a City Watershed Management Plan was established in 2006 and implementation of the many runoff mitigation strategies is well underway. Ordinances have been implemented to ban plastic bags, smoking in public places and Styrofoam food containers in an effort to reduce trash in storm water discharges. City residents have twice voted to impose parcel taxes to fund these programs and projects that safeguard our water resources.

In its current form, the NPDES permit does not distinguish between those permittees that do their part to achieve improved water quality and those that do not. Despite the many proactive steps undertaken and the vast improvements achieved, our City is considered nonetheless out of permit compliance, as is evident in the Notices of Violation that were issued to the City by the Board on March 4, 2008 and October 15, 2009. The City believes that a more appropriate approach is for the Board to take into account the efforts actually undertaken and their effectiveness. Otherwise it appears that the Board has predetermined compliance without regard to actual events. Such a potential raises serious fundamental fairness and due process concerns.

As the City understands the proposed process, the draft permit will continue to expose the City to these enforcement actions and potential 3rd party lawsuits almost without regard to the actions of the City. It establishes the specter of expected non-compliance regardless of the level of effort exerted by the permittees.

Implementation of the Watershed Management Programs (WMP) promulgated in the permit requires investment of public resources, but will not guarantee permit compliance.

The science to support the efficacy of Best Management Practices (BMP) in achieving a numeric water quality objective does not currently exist. However, the WMP and the adaptive management process used to implement the WMP will help create the data and the science needed to establish effective BMPs for specific water quality objectives.

Therefore, the City fully supports the implementation of a Watershed Management Program. It represents a proactive approach to improving water quality in our receiving water bodies and protecting their beneficial uses and the City is prepared to allocate its resources to the implementation of a WMP that is both reviewed and approved by the Board.

However, with the current permit language, a permittee could fully implement a Board sanctioned WMP yet still be held in violation of the permit if any of the numeric limits were not met either in the receiving water limitations or the final Waste Load Allocations for a TMDL. This does not present an incentive for the majority of the permittees to engage in a WMP and be part of a potential solution to achieving the desired water quality. Instead, the proposed provisions may encourage some permittees to do the absolute minimum required by the permit and hope for the best.

The Timeline for preparation of the Watershed Management Program is unreasonable.

The WMP is a significant exercise involving multiple agencies and jurisdictions. The effort will most likely require City Council action, execution of interagency memoranda of agreement, funding allocation, studies and data collection, technical workshops, public participation, drafting and multiple reviews of the WMP, obtaining agency approvals and other time intensive tasks. It is unreasonable to require a permittee to complete these tasks within a 12 month period and yet expect a comprehensive, well thought out program. A more realistic timeframe to submit a draft WMP is 24 months.

Securing fiscal resources necessary to meet the requirements of the permit is not within direct control of the City.

The 31 business day review period is insufficient time for our staff to complete anything approaching a thorough economic analysis of the permit requirements. However, it is clear that the robust permit requirements will result in significantly increased costs to the permittees. The terms of California's Proposition 218 require the approval of voters prior to the creation or increase of the taxes or fees that would be required to pay for these costs. In the likely event of voter rejection of increased taxes during difficult economic times, permittees will be unable to identify sustainable sources of funding necessary to meet the permit requirements without imposing significant cuts to vital community services.

Changing the design storm criteria to the greater of the ¾" storm and the 85th percentile storm creates unnecessary need for additional evaluations and results in added costs for the developers.

The City's urban runoff ordinance designates the ¾" storm as its design criteria. Currently, over 1,600 structural stormwater BMP's have been installed within our City using this design criteria. All NPDES permits in California deem the ¾" storm to be equivalent to the 85th percentile storm. The City is concerned that requiring evaluations of the larger of the two storms will result in unnecessary additional costs to an already heavily regulated and economically impacted development industry and recommends retaining the two design storms as equivalent design criteria.

Numeric limits for final TMDL waste load allocations counteract the effectiveness of the Watershed Management Program to attain improved water quality.

There currently is no proven solution to attaining numeric limits. The iterative approach of BMP implementation as described in the WMP is a rational process to work towards attaining numeric limits. The permit does not allow for final TMDL compliance by way of fully implementing an approved WMP and this contradicts the intent of the WMP and subsequently does little to improve water quality. Since permittees would invest substantial time, effort and fiscal resources to implement comprehensive WMPs, it would be sensible for the Board to provide reasonable assurance that an approved WMP that is fully implemented will constitute final TMDL compliance.

Conclusion

In summary, the City is concerned about the real world impact of the draft permit. It provides permittees with no feasible means to achieve compliance. As a result, it will likely redirect stakeholder attention from water quality improvement towards the courtroom. On the one hand, it empowers third parties to file unnecessary lawsuits against the permittees, including those engaging in good faith efforts to improve water quality. On the other, its uncompromising approach all but pushes permittees to challenge the legitimacy of some of the permit provisions. A permit scheme that potentially provokes this type of behavior does little to attain water quality improvement. As currently drafted, the permit may ironically redirect limited public resources away from environmental compliance and toward litigation. The City believes that such an outcome would be a lost opportunity, especially since the scarce resources would be better dedicated to the implementation of water protection activities.

The City of Santa Monica has repeatedly demonstrated that it is a willing and committed partner of the US Environmental Protection Agency, the LA Regional Water Quality Control Board, and the non-government environmental organizations in protecting our waters from pollution. Our common goal can be achieved by the implementation of a discharge permit with practical and attainable compliance requirements that encourage dischargers to continuously implement, evaluate and enhance different runoff mitigation strategies in an effort to achieve

water quality objectives. Such a permit will promote the cooperation and mobilize the expertise of all stakeholders in identifying effective BMP's and solutions to our region's water quality problems.

The Board is currently in a position to establish a true solution oriented permit and it has taken the necessary initial steps to do so with the inception of the WMP. Issuing a permit that includes implementation of the WMP as a compliance option presents a unique opportunity for stakeholders to establish the science and technology that will support the effectiveness of BMP's to meet our water quality objectives. The City of Santa Monica encourages the Board to seize this opportunity.

Thank you for the opportunity to comment on the draft order. If you have any questions, please feel free to contact me or our Watershed Program Manager, Rick Valte, at (310) 458-8234.

Sincerely,

Rod Gould
City Manager

Encl. Exhibit A – detailed comments



City of Sierra Madre

Public Works Department

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of Sierra Madre appreciates the opportunity to submit comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City has also attached the comments submitted to you from the Los Angeles Stormwater Permit (LAPG) group. The City of Sierra Madre has participated with the LAPG group in producing the comments and fully supports the comments in their entirety.

In addition to the attached LAPG comments, the City of Sierra Madre would like to separately and specifically address a few components of the Draft Order that are of major concern to the City of Sierra Madre.

- We feel that the review and comment period for this Draft Order must be extended. At a minimum, we request that the permit adoption hearing be scheduled after September 6-7 so as not to conflict with the League of California Cities Conference that will be attended by Sierra Madre management staff. We support the request of the LASP that the Regional Board provide another complete second draft and provide 180 days to review and comment.
- We feel that the Receiving Water Limitation language should be completely reconsidered in light of the numerous and varied issues that are outlined in the LASP comments. And we support the recommendation to use the draft language that was developed by the California Association of Stormwater Quality (CASQA).

232 West Sierra Madre Blvd., Sierra Madre, CA 91024
Telephone (626) 355-7135 Fax (626) 355-2251

- As small city with a volunteer fire department and a municipal water provider for approximately 3600 metered water services the City of Sierra Madre believes that this permit contains a positive development in that it recognizes that Community Water Systems (CWSs) and Fire Departments (FDs) have legal obligation under both state and federal statute and regulation to discharge water for the protection of public health and safety. Sierra Madre supports the regulatory accommodations provided in this permit which will allow CWSs, FDs, and MS4 Permittees to work together to resolve water quality problems rather than placing them a position where conflict would have resulted. The City of Sierra Madre would like to offer the following comments:

- **Regarding footnote 8 on the bottom of page 27:**

- While in technical terms “raw water” is not potable, there is a very slight possibility that the pipeline linking the city’s source of raw water with our groundwater recharge facility may leak due to age or private contractor error. This raw water pipeline is a part of the city’s potable water supply source and therefore an integral part of our potable water system. Thus, we respectfully request that the term “raw water” be included in the footnote language as noted below.

“8 Potable water distribution system releases means sources of flows from drinking water storage, supply and distribution systems (including flows from system failures **and raw water**), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and minor non-invasive well maintenance activities not involving chemical addition(s) where not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG994005, or another separate NPDES permit.”

- **Regarding Top of Page 28, Clarification of the one acre-foot threshold.**

- As written, it is possible to interpret the one acre-foot threshold as applying to the cumulative total of smaller discharges which exceeds one acre-foot and/or as applying only to the third measure, “record keeping”. We believe that the intent of the language is that all individual discharges greater than one acre-foot need to have all three of the noted actions taken. So we recommend that the text be re-

written so that it is clearer that the threshold applies to all requirements. This should be done in Table 8 as well.

“Additionally, each Permittee shall work with potable water suppliers that may discharge to the Permittee’s MS4 **to ensure that all individual discharges greater than one-acre foot shall have** : (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern⁹ in the potable water supply release; and (3) record keeping by the potable water supplier. ~~for all discharges greater than one-acre-foot.~~^{10”}

- **Regarding Footnote 9 at the bottom of Page 28:**
 - This footnote is difficult to interpret and contains analyses of marginal significance. We believe that it should be consistent with Footnote 10 where the analysis of chlorine residual and pH are required. Further, the language used in this footnote makes more sense in Table 8 and as a result we propose the following changes:
 - ⁹ Pollutants of concern include, at a minimum, ~~trash and debris, including organic matter, total suspended solids (TSS),~~ **chlorine residual, pH,** and any pollutant for which there is a water quality-based effluent limitation in Part VI.E applicable to discharges from the MS4 to the receiving water.
- Page 33, Table 8: ~~Segregate conditionally exempt non-storm water discharges from potential sources of pollutants to prevent introduction of pollutants to the MS4 and receiving water.~~
- **Essential Conditionally Exempt Non-Storm Water Dischargers (CENSWDs) must ensure flow path between discharge point and entrance to the MS4 (e.g. streets, gutters, swales) is free of trash and debris, organic matter, and potential sources of pollutants.**
- **Regarding Page 29 III. DISCHARGE PROHIBITIONS 4 a ii:**
 - We believe that this provision does not serve any purpose. If a local MS4 owner or operator requires a local permit, the MS4 permit does not need to require the permittee to require that permit, it is already required. If the local MS4 owner or

operator does not require a local permit, the MS4 permit does not change that. We propose that this provision be eliminated entirely.

- ~~Obtains any local permits required by the MS4 owner(s) and/or operator(s);~~

- **Regarding Page 33, Table 8.**

- The provision for LACFCD to mandate reporting by potable water suppliers does not make sense. LACFCD has no legal mechanism to enforce this provision except where the discharge is to a County owned right of way, which is in only a very small number of cases. It makes much more sense and is consistent with the rest of the permit to require each MS4 permittee to have this requirement.

~~“Whenever there is a discharge of one acre-foot or more into the MS4, the **Los Angeles County Flood Control District MS4 Permittee** shall require advance notification by the discharger to the MS4 Permittee. **to the potentially affected MS4 Permittees, including at a minimum the District and the permittee with jurisdiction over the land area from which the discharge originates.**”~~

- **Regarding Page 29 Permittee Requirements:**

- This section makes frequent references to Table 8 which are BMPs for Non-Essential CESNSWD (except for the very first one which covers both Essential and Non-Essential CESNSWDs). However it is confusing as worded. The text could read...

“Develop and implement procedures to ensure that a discharger, if not a named permittee in this Order, fulfills the following non-stormwater discharges to the Permittee’s MS except as provided in III A 2 a i. and ii.”

- **General Comment: The Board may wish to consider using the terms Essential CENSWD and Non-Essential CENSWD for clarity’s sake. It is difficult to discuss the provision of this permit without some sort of definitive terminology.**

- Finally, we reject the explanations contained within the Draft Order that pertain to economic implications, including the determination that this Draft Order does not qualify as an 'unfunded mandate' in the State of California. We are in agreement with the numerous written and oral comments from many agencies that demonstrate that the Draft Order requirements are beyond the scope of Federal Regulations.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me.

Sincerely,



Bruce Inman
Director of Public Works
City of Sierra Madre



CITY OF SIGNAL HILL

2175 Cherry Avenue ♦ Signal Hill, CA 90755-3799

23 July 2012

VIA EMAIL

Mr. Ivar Ridgeway
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Subject: Comments on the Draft Tentative Order for the Reissued Los Angeles County MS4 Permit

Dear Mr. Ridgeway:

I am writing on behalf of the City of Signal Hill to provide comments on the June 6, 2012 Tentative Order for the reissued NPDES Permit for the Greater Los Angeles County Municipal Separate Storm Sewer System. Thank you for the opportunity to provide these comments.

The City of Signal Hill appreciates the process that the Regional Water Board and its staff have followed in developing the new permit. We particularly appreciate the availability and responsiveness of the key staff members working on development of the draft permit. However, given the magnitude of the permit and the complexities and costs of some of the new and revised requirements, we would have appreciated an Administrative Draft between the incomplete Staff Working Proposal and the Tentative Order. We have several concerns with the Tentative Order that might have been resolved had there been an Administrative Draft with a comment period that would have allowed further discussions with staff and presentations to the Board on critical permit issues.

The City of Signal Hill has several concerns with the Tentative Order. The most significant is the tremendous cost increase at a time when municipalities have lost money

to the State and are in dire financial straits. Our second serious concern is that the way the discharge prohibitions and receiving water limitations are expressed in the Tentative Order is inconsistent with precedential State Water Board Order 99-05 and will expose our city and the other Permittees to third-party lawsuits, even though we are following the permit and the iterative process in a conscientious manner to improve water quality. The third most serious flaw is the expression of final TMDL waste load allocations as numeric water quality-based effluent limits (WQBELs). Fourthly, the City of Signal Hill is extremely disappointed that our request for a separate MS4 is denied in the Tentative Order.

We will offer explanations of three of our major concerns with the Tentative Order, followed by specific comments on other sections of the Tentative Order, and a justified request for a separate MS4 permit for the City. Some of the following comments were previously provided to staff in letters that we understand were not provided to individual Regional Water Board Members.

Excessive and Disruptive Costs

We recognize that both the State Water Board and the Regional Water Board have been handicapped by lack of funds for staff and needed research by the State's budgetary woes. However, it appears that Regional Board staff did not fully consider the costs of proposed new and expanded elements of the Tentative Order; nor did they appear to appreciate the fiscal crisis impacting cities and counties in Los Angeles County.

One example of staff's misunderstanding of municipal finances, or lack of concern about the fiscal crisis facing Los Angeles County and the cities within the County, is Provision VI.A.3.a. This provision requires that "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order." We note that this provision is labeled a standard provision. However, we could not find it in either the Standard Provisions or the Special Provisions of Order No. 01-182, the current MS4 Permit. Inclusion of such a provision in the Tentative Order appears to demonstrate that staff believed they were given carte blanche to include new and expanded requirements without serious consideration of costs or the ability of municipalities to pay to meet the requirements without cutting other services. In reality, stormwater quality programs are, for the most part, utilities without dedicated funding sources. Since the passage of Proposition 218 in 1996, it has been extremely difficult for local governments to charge new fees to pay for the ever-expanding requirements of MS4 permits.

One component of the Tentative Order where staff included new and expanded requirements without serious consideration of costs is the Monitoring and Reporting Program. This component and the inclusion of TMDL implementation requirements are the major drivers of the increased costs associated with the new Los Angeles County MS4 permit(s). Our city was so concerned about the complexities and potential costs of the expanded Monitoring Program that we enlisted the assistance of Kinnetic Laboratories, Incorporated (KLI) to review the proposed new monitoring requirements

and the proposed Municipal Action Levels. Their comments are found in Attachment 1 to this letter. Many of their comments relate to the cost impacts of the new requirements. KLI's overall assessment is that "The Draft Monitoring and Reporting Program in the tentative order will drastically increase monitoring costs." They go on to say that "We strongly believe that the programs, as currently specified, will only lead to magnification of current monitoring costs without any substantial improvements in addressing the real issue of assuring that beneficial uses are maintained in the receiving waters." KLI's specific comments on elements of the Monitoring Program are addressed below in the monitoring comments section of this letter.

The fiscal plight of cities in Los Angeles County and across the state was highlighted in a July 19, 2012, front-page article in the Los Angeles Times entitled, "Compton on Brink of Bankruptcy." In addition to discussing the fiscal challenge facing the City of Compton, the article describes "the complexity of the fiscal crisis roiling California cities this year." Also in the July 19, 2012, edition of the Times, the Capitol Journal column by George Skelton was entitled "Fatal Flaws in State Finances." The opinion piece starts by noting, "San Bernardino, Stockton, and Mammoth Lakes all screwed up and became bankrupt. But the rest of us shouldn't get sanctimonious." Mr. Skelton makes the point that the root cause of the financial plight of local governments in California is systemic and that the funding arrangements between the State and the cities, counties, and school districts is unworkable. He also asserts that things could get worse before they get better. He notes that eight other cities, including Monrovia and El Monte, have notified potential bond buyers that the cities are in serious trouble.

Skelton also observes that the cities flirting with bankruptcy are "vulnerable to all the falling financial crud that threatens to bury them." This includes the exponentially increasing costs of stormwater quality management and compliance associated with implementing the Tentative Order, as written. The costs of the expanded monitoring program and the method of incorporating permit requirements that are consistent with the assumptions and requirements of waste load allocations of over 500 water body-pollutant combinations contained in 33 TMDL documents will place extreme financial stress on cities that are already coping with a bad economy, pension liabilities and the seizure of redevelopment funds by the state, as well as exposure to third-party lawsuits. Member Lutz, Mayor of the City of Monrovia, should be able to shed some light on the financial plight of cities for the Board since Monrovia is one of the eight cities that, according to the State Treasurer's office, disclosed the seriousness of its financial problems to potential bond buyers.

The loss of redevelopment funding is a significant problem for Signal Hill, where the Signal Hill Redevelopment Agency had budgeted over \$800,000 this year to begin to address five of the six TMDLs that currently regulate our small, 2.2 square mile community. AB 1X26 effectively dissolved redevelopment agencies statewide and has resulted in Signal Hill's having to devote additional General Fund revenues to implement our stormwater program at a very difficult financial time for the community. Without the planned Redevelopment Agency expenditures, the City has budgeted \$869,235 for the coming fiscal year (see table below) to fund its Stormwater Program. However, this

amount is far below what is required to fully address the TMDLs that impact our city. Our estimated stormwater budget for the next few years to fully address permit requirements and TMDL implementation is approximately \$1.6 million per year. We don't foresee a time in the next four to five years when our General Fund will be able to keep up with the stormwater costs resulting from the Tentative Order, as written, which means that existing programs will need to be severely reduced or eliminated to fund the new stormwater requirements.

Figure 1

City of Signal Hill Environmental/Stormwater Program Budget

City Acct. No.	Budget Item Description	FY 12/13 Budget	Comments
510	Personnel	\$ 63,010	
309	Trash Reduction TMDL	\$ 74,575	Catch Basin Inserts and Hamilton Bowl
347	Annual MS4 Permit Fee	\$ 5,000	
355	Legal Services	\$ 50,000	
356	Storm Water Quality Contract Services & Technical Studies	\$427,000	Includes expenditures required for special studies for newly implemented and proposed TMDL's
372	Restaurant /Industrial Waste Inspections	\$ 44,000	Cost offset by fees
376	Street Sweeping	\$150,400	
	Bus Shelter Cleaning	\$ 31,000	Cost offset by Proposition A
440	Recycling and Haz-Waste	\$ 24,250	
Proposed FY 12-13 NPDES Budget:		\$869,235	

It appears from the magnitude of increased costs associated with the Tentative Order that Regional Board staff assumes that the stormwater fee proposed by the Los Angeles County Flood Control District will be approved by property owners next spring. Actually, passage of the fee is far from certain. In fact, the proposed fee came before the County Board of Supervisors three times before staff was directed to move forward with creation of a Final Draft Ordinance, a protest hearing, and a possible vote. If the Regional Water Board agrees with staff that the new costly programs should be required, perhaps those

programs should be contingent upon passage of the stormwater quality fee next year. This would be parallel to the actions taken by the University of California Board of Regents in freezing undergraduate and some graduate school tuitions pending the vote on the Proposition 30 tax hike measure in November.

The County has estimated that Signal Hill is likely to receive only \$211,000 annually if the water quality fee is passed by the voters. Although this amount will be helpful, it is only a fraction of the estimated amount necessary to implement the six TMDLs regulating our community and to meet other permit requirements. As the Regional Board is aware, these six TMDLs are likely to be supplemented by additional TMDLs and the NPDES permit requires compliance with other water quality standards not found in the TMDLs.

To further illustrate the dire financial impact that the Tentative Order will have on the City of Signal Hill, we are submitting the attached Cost Estimation and Environmental Impacts Worksheet for implementing the Trash TMDL, the Metals TMDL, and a Bacteria TMDL for the Los Angeles River dated July 25, 2006. At that time, the total NPDES budget was estimated at \$534,475 (Attachment 2). As shown above, our costs to implement our ongoing stormwater quality program, including maintenance costs associated with implementing the Los Angeles River Trash TMDL, are projected to be over \$869,000 for 2012-2013. This budget does not include full implementation costs for the Los Angeles River Metals TMDLs, the Los Angeles River Bacteria TMDL, the Los Angeles River Estuary Bacteria TMDL, or the Los Cerritos Channel Metals TMDLs.

Consistency with State Water Board Order 99-05

The City of Signal Hill agrees with the LA Permit Group's concern that the receiving water limitation (RWL) language currently in the Tentative Order creates an unnecessary and counter-productive liability for municipalities. If the language in the Discharge Prohibitions and Receiving Water Limitations Parts of the Order were fully consistent with precedential State Water Board Order 99-05, the liability for municipalities could be avoided.

With the exception of section references and substituting "Receiving Water Limitations" for "Water Quality Standards" and "Water Quality Objectives or Water Quality Standards," the language in the Tentative Order is virtually identical to the receiving water limitation language in the 2001 MS4 Permit that the United States Court of Appeals for the Ninth Circuit has interpreted differently than the State Water Board's interpretation since Order 99-05 was adopted on June 17, 1999. In this precedential order, the State Water Board substituted EPA receiving water limitation language for language that the State Water Board had included in Order 98-01, to which EPA objected when the language was used in permits issued by the San Francisco Bay and San Diego Regional Water Boards.

During the July 9, 2012 staff workshop on the Tentative Order, staff stated that the language had not been substantially changed because the current language was mandated by the State Water Board's precedential order. However, the language in the 2001 MS4 permit was not totally consistent with the precedential order issued by the State Water Board. Order 99-05 clearly states that "The Permittees shall comply with Discharge Prohibitions []³ and Receiving Water Limitations [] through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this permit including any modifications." Footnote 3 directs that appropriate numbers for prohibitions and limitations that implement water quality objectives and water quality standards be inserted in place of the brackets. The Order goes on to say that "If exceedances of water quality objectives and water quality standards (collectively, WQS) persist notwithstanding implementation of the SWMP and other requirements of this permit, the Permittees shall assure compliance with Discharge Prohibitions [] and Receiving Water Limitations [] by complying with the following procedure:..." The specified procedure is the procedure that has become known as the iterative process.

The Tentative Order and the 2001 MS4 Permit are both inconsistent with Order 99-05 in that the iterative process is only included in the Receiving Water Limitations part of the permit instead of being included in both the Discharge Prohibition and the Receiving Water Limitations parts of the permit. The Regional Water Board could correct this deficiency by adding iterative process language similar to the language in Part V of the Tentative Order to Part III of the Order. The Board should also make sure that the iterative process language clearly applies to the cause or contribute prohibitions contained in the Receiving Water Limitations part of the Tentative Order. One way of accomplishing this would be to incorporate the Receiving Water Limitations language suggested by the California Stormwater Quality Association.

The Regional Board should also specifically reference Watershed Management Programs in Parts III and V in order to better integrate the Watershed Management Program provisions with the iterative process in the Discharge Prohibitions and the Receiving Water Limitations parts of the permit. In addition to achieving compliance with Order 99-05, such modifications to the proposed permit would foster implementation of the adaptive management process described in the Watershed Management Program provisions and reduce the vulnerability of the Permittees to enforcement actions and third-party lawsuits when they are engaged in an iterative (adaptive management) process through a watershed-based program to address exceedances of water quality objectives and water quality standards in a prioritized, systematic manner, as the Regional Board is encouraging with the incorporation of the Watershed Management Program provisions into the permit.

Further, the Regional Water Board should work with the State Water Board to consider other ways to strengthen the iterative process mandated by Order 99-05. The magnitude of changes resulting from expressing the final waste load allocations from 33 TMDL documents as numeric water quality-based effluent limitations could place some

Permittees in immediate non-compliance with the permit if they do not have the ability to respond to exceedances of water quality standards, including WQBELs, through an orderly adaptive management process.

Consistency with Assumptions and Requirements of WLAs in TMDLs

The City of Signal Hill supports the premise behind Provision VI.E.1 that provisions of this part of the permit must be “consistent with the assumptions and requirements of all waste load allocations (WLAs) established in TMDLs for which some or all of the Permittees in this Order are responsible.” This statement is consistent with the requirement in 40CFR 122.44(d)(1)(vii)(B) which requires that when developing water quality-based effluent limits, the permitting authority shall ensure that:

“(B) Effluent limits developed to protect a narrative water quality criteria, a numeric water quality criteria, or both, are consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.”

However, the regulations do not require WQBELs to be numeric in order to be consistent with the assumptions and requirements of waste load allocations. In fact, 2002 and 2010 EPA guidance memos both clearly allow the WQBELs in permits to be expressed either numerically or in the form of BMPs. It is a decision left to the permitting authority.

The issue of how to express water quality-based effluent limitations in NPDES permits has long been debated. On August 26, 1996, EPA gave notice in the Federal Register (61 Fed. Reg. 43761) that it had issued a policy outlining an interim approach for incorporating water quality-based effluent limitations into stormwater permits. The policy states that stormwater permits do not need to include water quality-based effluent limitations. Instead, the policy focuses on the use of BMPs followed by “expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards.” The policy applies only to EPA, but EPA encouraged states to adopt similar policies for stormwater permits. California did so, as explained in SWQCB Order 91-03. This policy formed the basis for what was later articulated in State Water Board Order 99-05.

In Order 98-01, the State Water Board explained that it has “determined that for municipal separate storm water permits, BMPs constitute valid effluent limitations to comply with both the technology-based and water quality-based effluent limitation requirements.” The State Board also noted that, “In fact, narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements, including reduction of pollutants to the maximum extent practicable, and water quality-based requirements of the CWA.” The State Water Board also concluded that “storm water permits must

achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality-based effluent limitations,” and that, “Given the unique nature of storm water discharges, it is reasonable that implementation take place, where appropriate, on a phased basis.” Based on these and other conclusions, and as a precedential decision, the State Water Board approved receiving water limitation language to be included in future municipal storm water permits. As explained above, this language was not acceptable to EPA and the State Water Board adopted more rigorous language in Order 99-05.

EPA affirmed the appropriateness of an iterative adaptive management BMP approach for improving water quality over time in its November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.” This memorandum clarified EPA’s regulatory requirements for, and provided guidance on, establishing waste load allocations for stormwater discharges in TMDLs approved or established by EPA. It also provided guidance for the establishment of water quality-based effluent limits in NPDES permits based on WLAs for stormwater discharges in TMDLs. A key point presented in the memorandum was that “EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.”

On November 12, 2010, EPA issued a revised guidance memorandum that indicated a preference for numeric WQBELs and recommended that permitting authorities use numeric effluent limitations in permits for MS4s and/or small construction stormwater discharges, where feasible. However, EPA continued to acknowledge permitting authority discretion concerning whether to use numeric WQBELs or to express WQBELs in the form of BMPs.

The 2010 EPA guidance memo states that when WQBELs are expressed in the form of BMPs, “the permit should contain objectives and measurable elements (e.g., schedule for BMP installation or level of BMP performance).” The City of Signal Hill strongly urges the Regional Water Board to direct staff to follow this approach and incorporate narrative WQBELs in the permit consistent with the WLAs in applicable TMDLs. This would facilitate the creation and use of a deemed compliant approach as was used in the Los Angeles River and Ballona Creek Trash TMDLs with approved full-capture devices. It would also allow a credit toward a compliance approach in which credit could be given for pollution prevention programs, such as SB 346, which target the true sources of pollutants over which Permittees have little or no control. Integrating WQBELs into the next generation of MS4 permits in the form of BMPs will encourage experimentation and strong pollution prevention efforts that could lead to achievement of water quality standards in a cost-effective manner. One example of how this could be done is from the Los Angeles River Metals TMDL, which states:

“Each jurisdictional group shall demonstrate that 75% of the group’s total drainage area served by the storm drain system is effectively meeting the dry weather WLAs.”

This requirement could be expressed in the permit as a WQBEL in the form of BMPs, as follows:

Permittees shall demonstrate that source control measures and treatment controls designed to effectively meet dry weather WLAs are being implemented and maintained in 75% of the total area served by the storm drain system.

In most cases, converting waste load allocations to WQBELs expressed as BMPs should not be time consuming, and having BMP implementation targets is an understandable and manageable task if money is available. On the other hand, meeting numeric WQBEL targets can be frustrating and potentially paralyzing and could cause more money to be spent on lawyers than on best management practices and other control measures. We urge you to direct staff to use the WQBELs as BMPs approach in a Revised Tentative Order.

The staff statement to Vice Chair Stringer during the May 3, 2012 Regional Board Permit Workshop that Permittees think the BMP approach gives more certainty about being in compliance because of the variability in rainfall was an accurate summation of the situation. In the absence of a uniform design storm for TMDL compliance, Permittees fear the potential for third-party litigation, especially after a large, high intensity rain event. The situation is compounded by the incorporation of 33 TMDL documents, including requirements for over 500 waterbody/pollutant combinations. Even though Permittees are already addressing many of these TMDL requirements on an *ad hoc* basis, the requirements are now going to be grouped together in the permit, and Permittees will be exposed to third-party litigation due to the TMDLs now being permit requirements.

The City of Signal Hill requests that the Board recognize the fears of Permittees and encourage expedient efforts to address the water quality impairments by including WQBELs expressed in the form of MEP compliant BMPs in the MS4 permits. Ideally, we would prefer that WQBELs always be expressed in the form of BMPs. However, we acknowledge that both the Board and the environmental community have concerns about the commitment of municipalities to effectively address water quality impairments. We believe that municipalities are more committed to improving water quality than either the Board or environmental groups believe we are. In order to give us a chance to demonstrate our commitment, we ask that you express WQBELs in the MS4 permits for at least the next permit term in the form of BMPs, with the provision that you will review this decision during the development of the next cycle of permits.

The City of Signal Hill also requests that Provision VI.E.2.d.i be modified by adding a subsection that specifies that a Permittee shall be considered in compliance with an interim water quality-based effluent limitation and/or interim receiving water limitations

for pollutant(s) associated with a specific TMDL while preparing a Watershed Management Program Plan in accordance with Provision VI.E.3 and Provision VI.C. We further request that interim implementation schedules be placed in the permit for EPA-established TMDLs covered by Provision VI.E.3 to provide protection from third-party litigation while Watershed Management Programs are being prepared and Basin Plan Amendments with implementation schedules are being drafted and adopted.

We would be pleased to work with staff and other interested parties to develop workable language.

Watershed Management Programs

Staff noted at the beginning of the April 5, 2012 Board Workshop on reissuance of the Permit that there was a decision last fall to structure the permit in such a way as to facilitate watershed management. The City of Signal Hill appreciates Staff's efforts to encourage and facilitate the watershed approach. It could encourage collaboration and could focus resources on the highest priorities, especially if the AB 2554 stormwater fee - with 50% of its funding allocated to watershed efforts approved by the proposed Watershed Authority Groups - is supported by property owners.

The City of Signal Hill is vitally interested in watershed planning. In fact, the City took a leadership role in organizing 40 cities, Los Angeles County, and Caltrans in the Los Angeles River Watershed to address the monitoring requirements for the Los Angeles River Metals TMDLs. Signal Hill convinced 35 of the cities, the County, and Caltrans to fund critical special studies related to the TMDLs.

The City also organized Jurisdictional Group 1 for the Los Angeles River Metals TMDLs. Upon the withdrawal of the City of Los Angeles and the County of Los Angeles, Signal Hill organized the remaining cities pursuant to MOAs with the Gateway Council of Governments. In addition, the City of Signal Hill organized cities within the Los Cerritos Channel Watershed to work with EPA and with the Regional Water Board. The Los Cerritos Channel work began informally in late 2008 initially to negotiate elements of the Metals TMDLs to be established by EPA. In 2010, the watershed cities formalized this watershed cooperation through a series of MOAs with the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority (Gateway Water Management Authority) to develop an implementation plan, work with Regional Board staff on a Basin Plan Amendment to appropriately incorporate the TMDLs into the Basin Plan, conduct special studies, and implement measures to achieve compliance with the Los Cerritos Channel Metals TMDLs.

We are encouraged by the staff's draft provisions in the Tentative Order that would allow individual cities to customize their strategies, control measures and BMPs to address these customized measures, either individually and/or with a larger group of Permittees, in the Watershed Management Programs. The City trusts that customization will foster creativity and allow experimentation. For instance, with Metals TMDLs, we believe that

to be successful in meeting water quality standards over the long-term, we will need to address the sources of metals deposited on the watershed through atmospheric deposition and get the help of various State and Regional agencies to control these sources.

We agree with the goal of the Watershed Management Program provisions to ensure that discharges from the MS4 achieve applicable water quality-based effluent limitations and do not cause or contribute to exceedances of receiving water limitations. We also recognize that programs cannot guarantee that either effluent limitations or receiving water limitations are met at all times because of variations in rainfall and the absence of a water quality design storm above which water quality standards would not be enforced on dischargers. Requiring achievement of effluent limitations and receiving water limitations for large, rare storms exceeds the maximum extent practicable (MEP) standard for MS4 discharges. The Tentative Order does specify that structural BMPs should be sized to treat the volume of stormwater runoff from the 0.75-inch, 24-hour rain event, or the 85th percentile, 24-hour storm, whichever is greater. However, the Tentative Order does not clearly state that this design storm is also the design storm for permit compliance.

The City of Signal Hill requests that the permit be structured to use the runoff from the 85th percentile, 24-hour storm event as a consistent design storm for both BMP design and enforcement of water quality standards. We have seen the Power Point presentation given by Dr. Youn Sim on the development of a water quality design storm at the 2011 CASQA Annual Conference. It builds on the work done by the Regional Board's design storm task force and presents a compelling argument for the 85th percentile, 24-hour design storm for both design and enforcement. Such an action by the Regional Board would help convince municipalities that they are not wasting money by investing in BMPs and other control measures in the absence of a physical limit on the storm size for which they have to meet water quality standards.

The City agrees with the requirement in Provision VI.C.1.c. that, within a Watershed Management Program, customized strategies and BMPs can be implemented through each Permittee's stormwater program, and/or collectively by all participating Permittees through the Watershed Management Program. We further agree with the requirement in Provision VI.C.3.b.i that Permittees identify strategies, control measures, and BMPs to be implemented through their individual stormwater programs, and collectively on a watershed scale, and Provision VI.C.3.b.iv.(4)(e) that Watershed Management Program plans clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures. This measure should protect conscientious Permittees from being held liable for the actions or inactions of other Permittees. We would appreciate confirmation of our interpretation that the provision provides protection against joint and several liability related to the actions or inactions of "bad actors." Making this clear in the permit will help convince every Permittee that it will be held responsible for its own actions or inactions, and that it will not be possible to hide and depend on the actions of other entities for protection.

The City strongly supports the requirement in Provisions VI.C.1.f.ii that each Watershed Management Program identifies and implements strategies, control measures, and BMPs to achieve applicable water quality-based effluent limitations, receiving water limitations, and/or non-stormwater action levels. It is imperative that Permittees and the Regional Board think beyond traditional treatment control BMPs in order to cost-effectively achieve compliance with water quality standards. However, we question the language of Provision VI.C.1.f.iii related to executing a monitoring and assessment program to determine progress toward achieving applicable limitations and/or action levels. We understand that the Regional Board would prefer to have a numeric indicator to monitor progress toward achievement of applicable water quality standards, but we are concerned with the wording of the requirement.

Specifically, we believe that the proposed wording is insufficient to prevent diversion of time, effort, and money due to third-party lawsuits based on temporary exceedances. The wording of the Provision should be modified to state that the monitoring and assessment program should be based on true benchmarks – indicators, rather than compliance points – designed to promote an adaptive management process during the implementation period.

The City is concerned that Provision VI.C.3.b.iii (Watershed Control Measures) does not sufficiently recognize pollution prevention, including what the California Stormwater Quality Association (CASQA) has described as *true source control*. Signal Hill, other cities within the region, and the Coalition for Practical Regulation contributed financial support, lobbyist services, and support letters for CASQA's efforts to address the major source of copper brake pad dust through a State legislative control measure, SB 346. The WMP section of the Permit should be re-written to recognize and encourage true source control as a pollution prevention measure that will ensure long-term compliance with water quality standards.

We acknowledge that Provision VI.C.3.b.IV(4) does recognize pollution prevention as a non-structural best management practice that can be included in Watershed Management Plans. However, we believe that true source control, including product substitution and materials substitution, as well as product take-back, needs more emphasis in regional and statewide efforts to improve water quality.

The City also appreciates the fact that the Regional Water Board's Watershed Management Areas (WMAs) may be subdivided into subwatersheds to focus water quality prioritization and implementation efforts by receiving waters, as well as the opportunity for individual municipalities to establish their own watershed management programs for watershed sub-drainages.

Further, the City appreciates Provision VI.C.3.b.iv.(4)(e) that specifies that the Water Management Program plans "shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures." We trust that this provision, in combination with a provision in the Code of Federal Regulations [40

CFR 122.26(a)(3)(vi)] that states, “co-Permittees need only comply with permit conditions related to discharge from municipal storm sewers for which they are operators,” will protect conscientious Permittees from being held liable for actions or inactions of other Permittees participating in the same Watershed Management Program.

The City of Signal Hill strongly supports the adaptive management process. A formal adaptive management process is specified in the Watershed Management Program section of the Tentative Order, but we regard the process as an integral element of the entire water quality improvement program. It was incorporated by the State Water Board into the receiving water limitation language adopted in State Board Order 99-05 as what has become known as the “iterative process.” It was also recommended in the 2001 National Research Council report, *Assessing the TMDL Approach to Water Quality Management*. The Council’s Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction strongly recommended that “TMDL plans should employ adaptive implementation.” The Committee defined adaptive implementation as “a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards including beneficial uses.”

Although adaptive management is a continuous process, having a requirement in the permit to report annually during the permit term beginning in 2015 could be valuable in focusing on continuous evaluation and improvement of a watershed management program, and on progress toward achieving water quality-based effluent limitations and receiving water limitations. The requirement in Provision III.C.6.b.i that individual Permittees revise their Jurisdictional Stormwater Management Programs annually will also foster continuous evaluation and adaptation of program elements.

Monitoring and Reporting Program

As noted above, the City of Signal Hill had Kinnetic Laboratories, Incorporated review the monitoring component of the Monitoring and Reporting Program because of its complexities and potential costs. KLI concluded that the monitoring program, as proposed, would be extremely costly and impractical. KLI’s report (Attachment 1) described the substantial monitoring effort over the last 20 years to assess chemical, physical, and biological impacts of pollutants on receiving waters and listed some of the many benefits of long-term monitoring of stormwater quality and quantity. However, they concluded that continuing and expanding on the current approach will tremendously inflate the costs of monitoring without substantially increasing the likelihood of making measurable progress of meeting the Clean Water Act goals of “fishable and swimmable waters.” Specifically, KLI recommended that continued intensive annual mass-emission sampling be conducted during alternating permit cycles to track long-term trends. Continual intensive monitoring for TMDLs should be limited to the constituents of concern. Savings from decreased mass-emission monitoring could be directed toward special studies to identify whether stormwater discharges are having measureable impacts on beneficial uses.

KLI also concluded that the proposed monitoring in Attachment E to the draft order would drastically increase monitoring costs, largely because of the proposed wet-weather stormwater outfall monitoring and toxicity testing requirements. Because of the requirement to monitor at least one major outfall per subwatershed drainage area within a Permittee's jurisdiction, the total number of outfalls monitored could be 200 or more. If the equipment purchase, installation, and operation of auto-sampler at 200 sites were to cost an average of \$75,000 each, there could be a first year cost of \$15 million for outfall monitoring. If each site were to cost \$100,000, the total cost to establish the stormwater outfall-based monitoring element of the monitoring program could be \$20 million.

KLI further concluded that the toxicity monitoring requirements could have a large impact on costs because of the large sample volumes required to allow both toxicity and chemistry monitoring. They also questioned the capacity of bioassay laboratories in Southern California to handle the large volume of samples.

In addition, KLI concluded that the present toxicity identification evaluation (TIE) requirements would add substantial costs to the program without providing useful information. They indicated that TIEs have served a purpose and will continue to play an important role in the identification of toxicants, but they argued that they should be used judiciously. KLI further suggested that simple measurements of chemicals currently known to be of concern are normally sufficient to identify problems without the added expense of numerous TIEs.

The report also contains several detailed comments in support of KLI's general conclusions. The City of Signal Hill recommends that Regional Board staff meet with KLI and other monitoring consultants to refine the Monitoring and Reporting Program to make it more practicable and less costly.

Attachment A - Definitions

The City appreciates the inclusion of a Definitions attachment. The attachment is much more complete than the limited definition section in the Minimum Control Measures part of the Working Proposal. However, a few revisions should be made to clearly define additional terms used in the Tentative Order and to expand upon current definitions.

- **BMPs** – There is already a definition for BMPs in Attachment A, but it should be revised to specifically reference source control, including true source control. Adding true source control to the definition of BMPs would encourage Permittees to be mindful of it as they design their stormwater quality improvement programs.
- **Development** – The definitions of Development, New Development, and Redevelopment should be clearly defined and added to the Definitions Section as they are in the existing MS4 permit, except that the 5,000 square foot threshold in the definition of redevelopment should be increased to at least 10,000 square feet.
- **Environmentally Sensitive Areas (ESAs)** – This term should be defined.

- **Green Infrastructure** - This term should be defined. EPA states on the LID page of its website that green infrastructure “is a relatively new and flexible term” that “has been used differently in different contexts.” EPA also states, “Green infrastructure can be used at a wide range of landscape scales in place of, or in addition to, more traditional stormwater control elements to support the principles of LID.”
- **Operational Source Control** – This term needs to be clearly identified and utilized throughout the document to differentiate it from True Source Control.
- **Predevelopment conditions** – This term is used in Provision VI.D.6.c.v(1)(c)(ii)2 and could be viewed in an overly broad manner unless it is clearly defined in the definition section.
- **Stormwater harvest and use** – Since it may be desirable in the course of implementing TMDLs to harvest stormwater from an existing built-up area to infiltrate or use for irrigation, this term should be defined.
- **True Source Control** – This term needs to be defined. Staff could use the definition from CASQA’s True Source Control Initiative.

Request for a Separate Permit

While the City of Signal Hill appreciates the Regional Water Board’s effort to reduce the potential problems of "Joint and Several Liability" in the Tentative Order, the City would still prefer to have its own MS4 NPDES Permit.

Provision VI.A.4.a of the Tentative Order specifies, “Each Permittee is required to comply with the Requirements of this Order applicable to discharges within its boundaries. Permittees are not responsible for the implementation of the provisions applicable to other Permittees.” This is a welcome clarification in light of the joint and several liability provisions in TMDLs, such as the Los Angeles River Metals TMDLs, that are being addressed by the Tentative Order.

We also appreciate the clarification in part VI. E.2.b.ii that, in situations of commingled discharges in the MS4 prior to discharging to the receiving water that, "Pursuant to 40 CFR Section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators." Further, we appreciate that provision VI.C.3.b.(4).(e) requires that a Watershed Management Program Plan "shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures." As mentioned above, this provision should help protect conscientious Permittees from being held liable for the actions or inactions of other Permittees.

However, as noted by Steve Myrter in his statement at the Regional Water Board NPDES Permit Workshop on November 10, 2011, the City of Signal Hill strongly believes that it can and should be granted its own permit. The background and justification for the City's request for its own permit is contained in Mr. Myrter's statement (Attachment 3 to this letter).

The Fact Sheet (attachment F to the Tentative Order) cites on pages F-15 and F-16 several factors that the Regional Water Board considered in evaluating the Reports of Waste Discharge (ROWDs) requesting separate MS4 permits. The first factor referred to the large inter-connected nature of the Los Angeles County MS4 system and the fact that the discharges from multiple cities often co-mingle in the MS4 prior to discharging to receiving waters. This factor should not preclude the City of Signal Hill from having its own separate permit. The City discharges to both the Los Angeles River and the Los Cerritos Channel through the City of Long Beach that already has a separate MS4 permit.

The second factor relates to the requirement to implement 33 predominantly watershed – based TMDL documents in this Order. The fact sheet asserts that having separate permits would make implementation of TMDLs more cumbersome. The City of Signal Hill strongly disagrees with this assertion. The City led the organization of Jurisdictional Group 1 for the Los Angeles River Metals TMDLs and accommodated the withdrawal of the City of Los Angeles and the County of Los Angeles by organizing the remaining cities and Caltrans through MOAs with the Gateway Council of Governments. The City of Long Beach is one of the cities in Jurisdiction Group 1, and both Caltrans and the City of Long Beach have separate MS4 permits. In fact, the Caltrans permit was issued by a different Water Board, the State Water Board. Because all the entities are subject to the same metals TMDLs and have organized themselves pursuant to MOAs with the Council of Governments, having separate permits has absolutely no impact the ability of the entities within the Jurisdictional Group to work together to implement the TMDLs.

The City of Signal Hill also led the organization of the entities within the Los Cerritos Channel Watershed to address the Cerritos Channel Metals TMDLs established by USEPA. The County also withdrew from this group and Caltrans has not yet formally joined, although it is represented at Technical Committee meetings. The cities within the watershed are organized pursuant to MOAs with the Gateway Water Management Authority. The fact that the City of Long Beach has a separate MS4 Permit from the other six cities in the watershed has not had an impact on their ability to work together to address the metals TMDLs.

The Fact Sheet also mentions the Watershed Management Areas (WMAs) specified in the Order. Three of these MWAs include the City of Long Beach with its separate permit.

The third factor mentioned in the Fact Sheet is the passage of AB 2554, the development of the County's Water Quality Funding Initiative, and the fact that 50% of the funding is allocated to Watershed Authority Groups (WAGs) to implement collaborative water quality improvement plans. Long Beach, with its separate permit, is in two of the WAGs. Furthermore, the WAGs are to be organized as joint powers authorities, so the fact that

one or more Permittee might have a separate MS4 permit will have no impact. A fourth factor apparently considered by Regional Board staff was the results of the on-line survey administered by the Regional Board staff. The fact that only four Permittees expressed a preference for individual permits is not justification for a single, one-size-fits-all, approach.

Furthermore, issuing a separate MS4 permit will not end the City's leadership in responding to multiple TMDLs nor place undue burdens on the Regional Water Board. The City is committed to continuing to organize and lead the 42 entities in the Los Angeles River Watershed with respect to coordinated monitoring and special studies. We are also committed to working with the entities in Jurisdictional Group 1 for the Los Angeles River Metals TMDLs and with the cities in the Los Cerritos Channel Watershed. In addition, we will be working with multiple jurisdictions to address the Los Angeles River bacteria TMDLs, the City of Long Beach Beaches and Los Angeles River Estuary Bacteria TMDL, and the Harbor Toxics TMDL. The City of Long Beach, with its separate MS4 permit, is a party to all of these TMDLs, so having a second city with a separate permit will not make addressing the TMDLs more cumbersome.

With respect to the extra work for the Regional Water Board, there should not be much. Since the Tentative Order for the new Los Angeles County MS4 permit does not include a Principal Permittee, each Permittee will submit its own annual report and presumably its own Report of Waste Discharge (ROWD) 180 days prior to the Order expiration date. In addition, Permittees and/or Watershed Monitoring Programs will be submitting monitoring plans, multiple monitoring reports, and financially supporting regional studies.

One other reason that there should not be undue burden placed on Regional Water Board staff as a result of giving the City of Signal Hill its own permit is that the structure of the Tentative Order is such that it could easily be converted to an individual permit. We expect we would be subject to essentially the same requirements as the others cities in the County. However, the number of attachments would be fewer since we are not subject to all 33 of the TMDL documents being addressed in the Tentative Order. To assist Regional Board staff, we would be willing to prepare a suggested revision in Word "track changes" mode to facilitate development of a separate MS4 permit for the City.

We agree with Member Glickfeld that the permit should provide a variety of options. One option that we would like to see is for proactive cities, especially those in multiple watersheds, to receive separate permits. Such separately permitted cities could still work with watershed or sub-watershed groups through Memoranda of Agreement to address TMDL implementation and other water quality issues. Given its unique geographic characteristics, its industrial heritage, its comprehensive and effective stormwater quality program, and its regional leadership in organizing municipalities to address water quality problems in multiple watersheds, the City of Signal Hill should be given its own MS4

permit. See attached Statement by Steve Myrter and Power Point presentation presented to the Regional Water Board on June 7, 2012. (Attachments 4 and 5).

Conclusion

We urge Regional Board to give serious consideration to the comments of all Permittees regarding the language and requirements of the Tentative Order. It is the Permittees who have experience with design, construction, operation, and maintenance of BMPs and the implementation of MS4 permit requirements. Utilizing that experience could significantly enhance the workability of the new MS4 permit. We particularly ask that the Board direct staff to reduce the increased costs of new and expanded permit requirements, including the costs of the Monitoring and Reporting Program. In addition, it is critical that the Discharge Prohibitions and Receiving Water Limitations language be changed to completely incorporate the iterative process element of State Board Order 99-05 and that both interim and final WQBELs included to be consistent with the assumptions and requirements of TMDL wasteload allocations be expressed as BMPs, at least for the permit cycle.

Finally, the City of Signal Hill would strongly prefer to have its own MS4 permit. We think we have demonstrated the ability to manage our own permit, that the factors used to review ROWDs should not preclude our being issued an individual permit, and that it would not be a burden on the Board or its staff to issue the City of Signal Hill an individual permit.

Thank you again for the opportunity to provide these comments.

Sincerely,

CITY OF SIGNAL HILL



Kenneth Farfsing
City Manager

Attachments

Cc: Board Member Maria Mehranian (Chair), LARWQCB
Board Member Charles Stringer (Vice Chair), LARWQCB
Board Member Francine Diamond, LARWQCB
Board Member Mary Ann Lutz, LARWQCB
Board Member Madelyn Glickfeld, LARWQCB
Board Member Marla Camacho, LARWQCB
Board Member Irma Muñoz, LARWQCB

Board Member Lawrence Yee, LARWQCB
Sam Unger, LARWQCB
Deb Smith, LARWQCB

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July 22, 2012

Mr. Kenneth Farfsing
City Manager
City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90775

Re: Comments on Attachment E Draft Monitoring and Reporting Program and the proposed Municipal Action Levels (Attachment G)

Per your request, we have reviewed several items included in the **Tentative Waste Discharge Requirements For Municipal Separate Storm Sewer System (MS4) Discharges Within The County Of Los Angeles Flood Control District, Including The County of Los Angeles and Incorporated Cities Therein, Except The City Of Long Beach** (Tentative Order). These include the Draft Monitoring and Reporting Program in Attachment E and the proposed Municipal Action Levels in Attachment G. Complete comments are enclosed.

We support shifting towards a watershed-based permitting system for more effective stormwater management. However, this should be done using a more adaptive management approach that allows the dischargers to address the issues in a staged manner where it is first determined whether discharges are having a significant impact on the receiving waters, identifying the nature of the impact, and then prioritizing further work in the watersheds or subwatersheds to address the primary issues. The present program will be extremely costly and impractical. Toxicity testing as currently designed will far exceed the capacity of the qualified bioassay laboratories in Southern California.

Please feel free to contact us if you have any questions regarding the detailed comments enclosed with this letter.

Sincerely,



Marty Stevenson
Principal and Senior Scientist

Enclosure (1)

**COMMENTS ON ATTACHMENT E DRAFT MONITORING AND REPORTING
PROGRAM
AND
ATTACHMENT G MUNICIPAL ACTIONS LEVELS**

GENERAL COMMENTS

Overall the proposed Monitoring and Reporting Program provides a number of elements that could be implemented selectively to address the listed primary objectives. The authors suggest that the plan also “provides flexibility to develop an integrated monitoring program to address all of the monitoring requirements of this Order and other monitoring obligations or requirements in a cost efficient and effective manner.” Although we recognize and appreciate the benefits of being able to address these issues on a watershed or subwatershed basis, the overly prescriptive requirements will severely limit any cost-efficiencies that may have been achieved by this approach.

A substantial effort has been expended over the past 20 years in order to assess chemical, physical, and biological impacts on receiving waters as well as to characterize pollutant concentrations and loads. While this effort has proven valuable in many ways, continuing and expanding on upon this approach will tremendously inflate the costs of monitoring without substantially increasing the likelihood of making measurable progress towards meeting the Clean Water Act goals of “fishable and swimmable waters”. Many of the benefits of long-term monitoring of stormwater quality and quantity include:

- the identification of organophosphate pesticides as a serious problem in stormwater discharges triggering the ultimate removal of these pesticides from the open market,
- Documentation of the rapid process in which diazinon and chlorpyrifos declined to levels below those that would cause a measureable amount of toxicity in urban stormwater,
- Identification of problems with pyrethroid pesticides that replaced former applications of diazinon and chlorpyrifos. Monitoring was actually not necessary to identify these compounds as likely problems in the receiving waters. This was predicted by many water quality professionals.
- The long-term monitoring efforts are just starting to show decreasing trends for lead and, to a lesser degree, zinc while many other common contaminants show no signs of change that can be distinguished such factors as normal variability due to the time of year, the size of the storm events, and antecedent dry weather conditions.
- Many of the persistent organic contaminants show signs of being detected more frequently at some sites but these types of compounds are poorly quantified by routine stormwater monitoring methods. Alternative, high volume (high cost) sampling methods are necessary to accurately assess loads for most of these compounds.

At the slow rates of decline that we are encountering for many of the remaining pollutants of concern, continued intensive annual sampling is not expected to be cost effective. Eliminating this type of monitoring for one permit cycle and then reintroducing this type of monitoring during the subsequent permit cycle should still be sufficient to document the more gradual decreases that we have only recently identified. Unless a site is subject to a TMDL, continued intensive monitoring of concentrations and loads is not expected to provide the benefits that we are seeking. For TMDL monitoring, only the constituents of concern would be sampled. Rather than increasing the intensity of monitoring, we would suggest decreasing routine mass emission monitoring. During the permit cycle where routine monitoring is minimized efforts could be better directed towards conducting receiving water monitoring designed to assess if stormwater discharges are having measureable impacts on the receiving waters and the nature of the impact. The mass emission monitoring effort would then be modified on the basis of these findings to focus on prioritized watersheds and subwatersheds that are having the greatest impacts on receiving waters.

Municipal Action Levels (MALs) are listed at the end of Attachment G to the Tentative Order. MALs are included for total mercury as 0.32 ug/L. These should be excluded for two reasons:

- Due to the volatility of mercury, it is inappropriate to collect and analyze mercury using peristaltic pumps and the intensive mixing processes necessary while combining multiple composite containers and subsampling into laboratory containers. If mercury was included in a program, sampling would need to be conducted manually using proper containers and sampling equipment. Although we recognize that the database used for the MALs was from composite samples, that still does not validate the approach.
- In addition to the problems with sampling methods, mercury was reported as detected in only 17% of the 178 samples. These included 30 samples of which 11 were reported as detected at the detection limit. Overall, this should not be considered an appropriate data set for calculation of MALs.

Savings introduced by decreasing the intensity of routine mass emission monitoring could be directed towards better studies in the receiving waters to identify whether stormwater discharges are having measureable impacts on beneficial uses. The results of these studies could then be used to prioritize and focus monitoring efforts on watersheds or sub-watersheds that are demonstrated to contribute to these impairments. This approach would be more consistent with the strategy suggested for the Model Municipal Stormwater Monitoring Program developed by the Southern California Stormwater Monitoring Coalition (Figure 1).

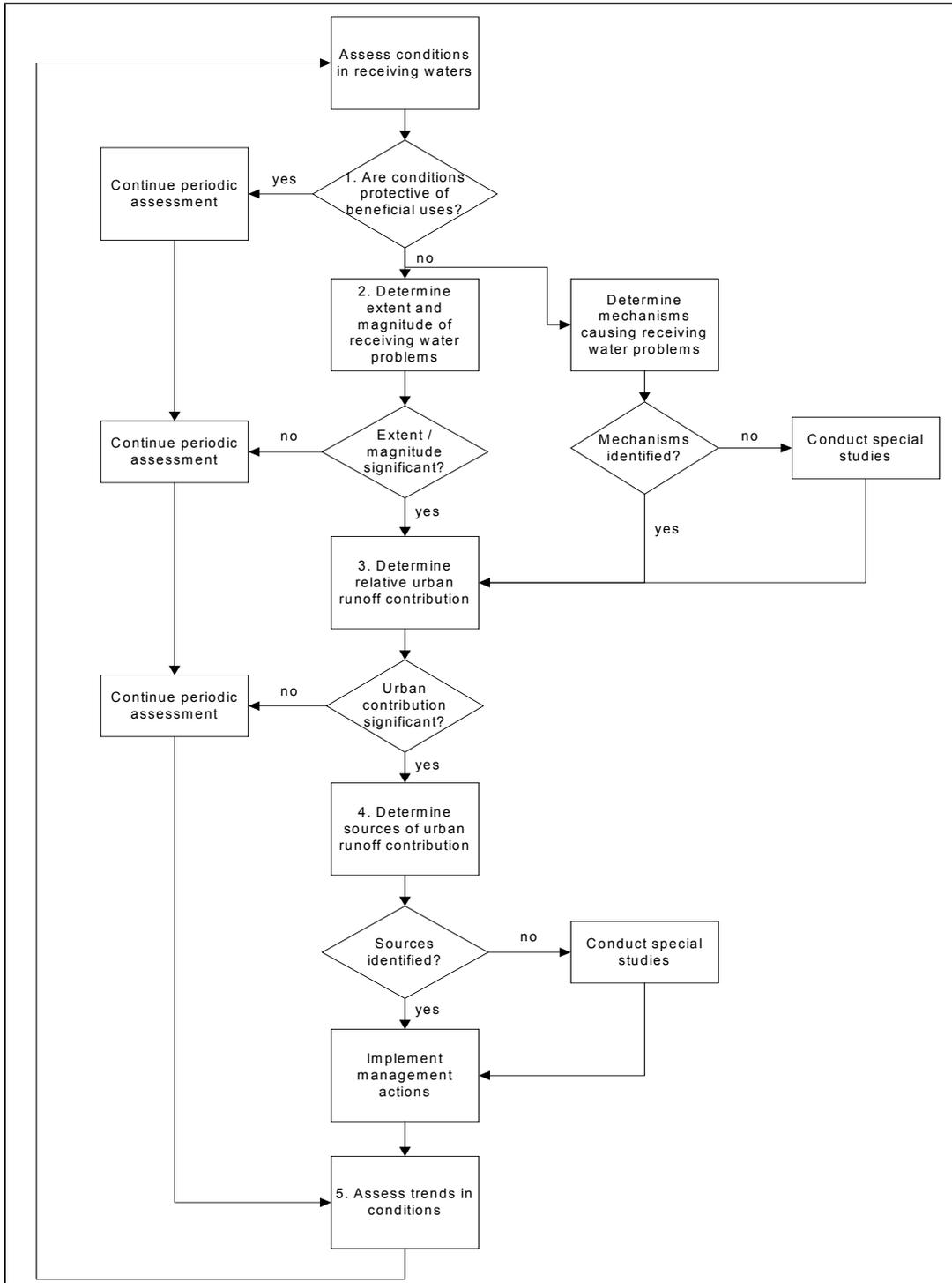


Figure 1. Flow Chart proposed by the Stormwater Monitoring Coalition (1994) for a Model Municipal Stormwater Monitoring Program.

The Draft Monitoring and Reporting Program in the tentative order will drastically increase monitoring costs. We strongly believe that the program, as currently specified, will only lead to magnification of current monitoring costs without any substantial improvements in addressing the real issue of assuring that beneficial uses are protected and maintained in the receiving waters. The wet-weather stormwater outfall monitoring toxicity testing requirements comprise two of the most significant impacts on monitoring costs. Site selection, equipment purchase, installation, and operation of each of these sites will run roughly \$75K-\$100K for the first year of the program and many Cities will have two or three sites that will need to be monitored since they discharge into multiple subwatersheds.

The toxicity testing requirements have a large impact on costs from at least three perspectives. The large sample volumes required (cited as five gallons in the MRP but likely greater) alone will require that sample containers be switched at least two to four times within a 24 hour period. This will be necessary to assure that sufficient water is collected to cover both toxicity testing requirements and chemistry. In addition, the samplers must be set conservatively to assure that the full volume is obtained. This can result in even more bottle changes if the storm exceeds the predicted magnitude. When large numbers of bottle changes are needed, additional storm crews are needed to assure that bottles are changed as soon as possible after filling to avoid loss of storm coverage.

The cost of the toxicity testing requirements is a significant factor but, the availability of qualified bioassay labs to meet the high demands of this and other stormwater monitoring programs may be an even greater issue. With all stormwater programs requiring that sampling be conducted during the first major storm event, bioassay laboratories in Southern California **will not** have the capacity to handle the large volume of samples. This is exacerbated by the recent closure of several bioassay laboratories that had been active in stormwater programs.

The TIE requirements will also introduce substantial costs to the program and are highly unlikely to provide useful information. A successful TIE requires enough toxicity be present to allow the procedures to effectively partition the toxicity. The minimum cost of a TIE will run at least \$5,000 and can run much higher with incorporation of Phase II and III TIE procedures. It also requires that the toxicity is relatively stable. There have been many stormwater TIEs conducted of the past 12-15 years where the toxicity was either not stable or not of a sufficient magnitude to allow the nature of the toxicity to be partitioned. TIEs should be used judiciously to assure that they are applied only when there is a strong probability of producing results that are valid, scientifically supportable and that can be used to support actions that may be necessary to control the source of the toxicity.

There have been many successful TIEs conducted on stormwater in the past 20 years that have provided valid information that led to actions being taken to eliminate the source of the toxicity. This included TIEs conducted using *Ceriodaphnia* from roughly 1995 to 2005 that resulted in diazinon and chlorpyrifos

being removed from residential use. They have also been used to identify pyrethroid pesticides as the major cause of toxicity in receiving water sediments as a result of chemicals used to replace diazinon and chlorpyrifos. While TIEs have served a purpose and will continue to play an important role in identification of toxicants, simple measurements of chemicals currently known to be of concern are normally sufficient to identify the problem without the added expense of numerous TIEs.

DETAILED COMMENTS

E.2 Storm water outfall based monitoring, page E-4

This type of monitoring should be selectively applied when necessary to track upstream sources of contaminants. It should be recognized that if this monitoring requirement is uniformly applied across all of the municipalities covered by the permit it could include in excess of 200 sites. Identification of suitable sites meeting the criteria later established in this document would be useful so that additional source tracking could be more easily implemented but the current approach is contrary to the intent of the National Research Council (2008) that suggested movement toward watershed-based monitoring.

G. Analytical Procedures , page E-6

Analysis of Suspended-Sediment Concentrations (SSC) ASTM D-3977-97 is specified on this page and at other locations in the document. This requires further explanation since, strictly speaking, this method is inconsistent with composite sampling. The SSC analytical approach relies on analysis of the entire sample whereas stormwater samples are the result of a subsampling process. The SSC method is most applicable to samples taken with USGS methods based upon isokinetic sampling through the flow profile and subsequent sampling of the entire bottle. The large and inconsistent differences in sediment concentrations attributed to TSS measurements vs SSC measurements were mostly based upon comparison of the Standard Methods TSS method and the SSC method. The SM TSS method uses a pipette to obtain samples from a 1-Liter container. The more accurate EPA TSS procedure uses stirring and pouring of a subsample from the bottle. Guo (2007) did a thorough laboratory study comparing the three methods using laboratory developed particle size distributions. The percent recovery of solids and correlations among TSS, SSC and true concentrations were compared. Guo demonstrated that the EPA TSS method was comparable to the SSC and true concentrations until particle sizes reached 50 – 100 microns. Differences between the EPA-TSS procedure and SSC were attributed to larger particles not being well mixed and remaining in the 1-L bottle after pouring a subsample.

Ultimately, the measurement of solids in stormwater depends upon two steps. The first step involves use of a sound subsampling method to assure that larger particles are well distributed in the subsamples. The second step involves the process used to extract the sediment and

water from the laboratory container. For stormwater, use of the whole subsample is critical to avoid loss of residuals. This is similar to the SSC methods with the exception that SSC procedures do not involve a subsampling procedure that inherently adds error to the measurement. It is therefore important to specify that the SSC method used with composite stormwater samples is actually a **modified procedure** that relies on the use of sound, reproducible subsampling procedures.

VI.C Minimum Wet Weather Receiving Water Monitoring Requirements, Page E-14

In general, this section needs to be split to separate monitoring requirements that might be appropriate for a mass emission station located at a site considered to be a receiving water site in a stream or channel and monitoring that is intended for bays, estuaries and the ocean where flow is not relevant. It is not clear that wet weather monitoring in the ocean, bays or estuaries should even be specified at this time. Any such work would more likely be developed as a special study if deemed necessary. Several monitoring efforts have previously been conducted to track plumes and toxicity but repeating these efforts may not be appropriate until it is demonstrated that land-based sources of zinc and copper, which were identified as the primary toxicants from Ballona Creek, are controlled down to levels expected to significantly reduce the observed toxic responses. Alternatively, this section may be intended to apply to wet weather monitoring as currently performed at the mass emission sites but that is not clear.

1.b.i The definition of a storm water event for purposes of sites located in the ocean, bay, or estuarine receiving waters is defined as “greater than or equal to 0.1 inch of precipitation, as measured from at least 50% of the Los Angeles County controlled rain gauges”. This is inconsistent with typical definitions of storm events and, would unlikely be a quantifiable event in terms of flow. Section VI.C.1.b.iii provides a definition for the first significant storm event of the year that should apply to all events. This section requires permittees to target the first storm event of the year where at least 0.25 inches of rainfall is predicted at a 70% probability 24-hours before the expected start of the storm.

1.b.iii This section specifies that sampling events be separated by a minimum of three days of less than 0.1 inch of rain each day. This is an insufficient condition for defining the minimum interval between events. Dry conditions should persist for at least 3 day with a total of less than 0.1 inches of rain for the period. It should be further emphasized that wet weather monitoring should preferably be separated by at least seven days of dry weather (less than a total of 0.1 inches). A suitable amount of time must be provided between sampling efforts to allow build-up of contaminants and to provide data needed to better understand contaminant build-up rates.

1.c, page E-15 This section requires further clarification. If this section is referring to stream or river receiving water monitoring, the start of monitoring needs to rely on the increasing flows in

response to the rainfall. It is unclear how it would apply to receiving waters defined as ocean waters, bays or estuaries. Monitoring of ocean, bay, or estuary receiving waters should normally be initiated in response to declining salinity or increasing turbidity in surface waters. Ultimately, initiation of monitoring should depend upon the sampling objectives that would be developed as part of a special study rather than a specification.

VIII. STORM WATER OUTFALL BASED MONITORING, Page E-17

Requirements under this section of the Monitoring and Reporting Plan will lead to an astronomical increase in monitoring costs and will completely overwhelm toxicity labs that are located in Southern California and capable of performing this type of work. Utilization of this sampling strategy should be applied extremely judiciously and only for the purpose of tracking critical sources of contaminants.

VIII. STORM WATER OUTFALL BASED MONITORING, Page E-18

C. Sampling Methods.

This section allows for samples to be collected during the first 24 hours of discharge. By not sampling all runoff from a given storm event, this approach introduces a bias into load estimates and the data cannot be compared to other whole storm composites. We realize that this is to ease the sampling effort and help address issues for constituents with short holding times. When monitoring is cut off at 24 hours for a lengthy storm, data should be flagged to indicate that it should not be used for correlative purposes. In the same manner, the data should not be considered for inclusion in the National Stormwater Quality Database that is used to generate Municipal Action Levels (MALs).

XI. REGIONAL STUDIES, Page E-25

A. Pyrethroid Insecticides Study Requirements

This sediment study requirement should be at least delayed if not eliminated. Intercalibration studies remain to be performed for pyrethroid pesticides. An initial round of testing was conducted under the SMC laboratory intercalibration program but participation was limited and the group detection limits were high (approximately 10 ng/L rather than 1 ng/L limits needed for water testing). The results of that program were not promising. While we recognize that the SMC testing was conducted for analyses in water rather than sediment, there is still concern regarding the accuracy and precision of this relatively new analytical procedure when comparing laboratories. A successful laboratory intercalibration study is necessary for both water and sediment before a program of this magnitude should be implemented.

This program is supposed to incorporate sediment collection in major rivers but does not appear to address other receiving waters (ocean, bays and estuaries) that may even be more of a concern. Since many of the waterways are constructed of concrete it should be specified that

this study is not intended to include sediment that may temporarily accumulate on the concrete bottoms.

The incorporation of toxicity testing will make this program even more expensive. Determining where toxicity in the sediments is associated with pyrethroid pesticides will require Phase I/II TIEs using a variety of manipulations with esterase, PBO, and temperature adjustments. Although a study of this magnitude is scientifically of interest, initial screening may more appropriately rely on sediment measurements of pyrethroids and TOC. The data would then be normalized to the TOC and compared against previously established LC₅₀s for TOC normalized concentrations of pyrethroids. These data should be sufficient to further identify watersheds where these compounds have the potential to produce toxicity. Use of these existing TOC normalized LC₅₀s to calculate expected acute Toxicity Units (TU_a) should be sufficient to trigger actions to reduce/eliminate pyrethroids in urban watersheds. If necessary, toxicity testing could be a followup action at sites where the chemistry is not sufficient to be confident of a toxic response.

Through the work of the California Stormwater Quality Association (CASQA) and the California Department of Pesticide Regulation (DPR) new requirements became effective on July 19 that will modify the way that professional applicators apply pyrethroid insecticides around buildings. In parallel, new labeling of pyrethroid products were implemented voluntarily by manufacturers at DPR's request. These include special labels for the most persistent pyrethroid, bifenthrin, which will provide further water quality protection. The combination of these efforts is expected to reduce treatments of outdoor impervious surfaces, thus reducing the quantity of pyrethroids that can be washed directly into gutters and storm drains when it rains or when water like irrigation overflow runs across treated surfaces. **Together, it has been predicted that the regulations and the new labeling will reduce the amount of pyrethroid insecticides in urban stormwater runoff by 80-90%.** We would suggest allowing some time for these actions to take impact before considering full implementation of the pyrethroid survey with both chemistry and toxicity testing.

XII. AQUATIC TOXICITY MONITORING METHODS, Page E-28 to E-29

This element of the program has not been well evaluated from either the practical perspective of conducting this work or from the incredible costs that would result from the program. During the initial screening phase, bioassay testing alone could run \$4,000 to \$5,000 per site. If TIEs are triggered, costs could run another \$5,000. Many of the aquatic toxicity monitoring requirements appear to be extracted from testing requirements and procedures used for wastewater discharges and do not recognize the problems associated with toxicity testing in stormwater.

C. Sample volumes

Section C indicates suggests a minimum of 5 gallons of water be collected for baseline studies and TIE studies. The base requirement to perform the initial chronic screening will be more like 6 gallons assuming that the acute testing requirements can be fulfilled by the first portion of the chronic tests. If that is not the case, 7-8 gallons would be necessary to fulfill both requirements. In order to accommodate a TIE during this screening phase, another 5 gallons of water would be necessary.

With the need for increasing volumes of stormwater comes the need for more field crews to be available to rapidly change out bottles as each fills. The highest volume composite containers commonly used are 20-L media bottles which roughly correspond to a 5 gallon container. With two bottles needed for bioassay testing another 1 to 2 bottles for chemical testing and QAQC, it becomes more challenging to collect high quality, representative samples. To meet this capacity requirement, the stormwater stations must be set at a conservative sampling rate that allows for a successful event even with storm volumes coming in below predictions so it would not be unusual to end up with 5-6 20-L bottles or more for a single event. These bottles will then require thorough mixing to make sure that each container represents a full storm composite. After that process subsamples would need to be taken for delivery to the labs.

Laboratory capacity for bioassay testing is already stressed at the beginning of the storm season when all permits are targeting the first event. Adding the quantity of toxicity tests required in the different elements specified in Attachment E of Tentative Order will simply not be feasible.

F. Acute Toxicity

We support use of 100% samples as a sound method for toxicity screening. This approach should be considered as the primary test with full dilution testing being the first response to exceedences of the targets

More flexibility needs to be added for alternative species to be used. Selection of test species should consider existing knowledge regarding pollutants of concern, selective sensitivity of the various test species and availability. The Pacific mysid is a good test species but is wild caught and often unavailable when needed. Other mysids such as *Acanthomysis* are cultured so they are more readily available and also can be tested in waters where the salinity must be adjusted with sea salts.

G. Chronic Toxicity, Page E-30

The chronic screening process is specified to be conducted over three events yet testing of wet weather discharges using bioassay tests is only scheduled for 2 events per year. This screening would not be complete until midway into year 2. This would result in three full rounds of three-species screening tests followed by one round using the species selected as the most sensitive. The three species screening studies would then start again at the start of the third year.

This type of process was designed for the wastewater industry and is not suitable for routine stormwater monitoring. The Regional Board should consult with SCCWRP and other stormwater programs throughout the State to determine an appropriate suite of bioassay tests based upon testing conducted over the past 20 years and knowledge of emerging contaminants.

G.4 Chronic Toxicity Identification Evaluation

A successful TIE requires sufficient toxicity present in the sample to enable dissection of the source of toxicity. Attachment E of the Tentative Order requires implementation of a TIE when effluent exceeds 1.0 TU_c which is defined as 100/NOEC. In the 1991 Technical Support Document (TSD), EPA actually recommends use of the EC₂₅/IC₂₅ to assess presence of chronic toxicity (100/IC₂₅). This helps avoid marginal hits and triggering of expensive, inappropriate TIEs with little hope of a successful endpoint.

Although chronic measurements are considered in triggering a TIE, the actual TIE process typically uses acute measures. Therefore acute measurements (LC₅₀) should also be considered when making the decision to move forward with a TIE. As a general rule, at least one TU_a above the detection limit is desirable to allow for a successful TIE while avoiding the high costs of false starts and disappearing toxicity. Some stormwater programs have therefore been authorized to use values of 2 TU_a for tests using full dilution series (e.g. *Ceriodaphnia* -water fleas) and 3 TU_a tests using brine to salt up to full strength sea water (e.g. the sea urchin fertilization test). These triggers have helped minimize implementation of TIEs without sufficient toxicity to expect definitive results.

XIV. STANDARD MONITORING AND REPORTING PROVISIONS

B.

It should be noted that the SMC laboratory intercalibration studies have not included all tests required in the Tentative Order.

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Cost Estimation and Environmental Impacts

Worksheet

Trash TMDL, Metals TMDL and Bacteria TMDL
For the
Los Angeles River

July 25, 2006

Background Information

City:	<u>SIGNAL HILL</u>
Population (2005):	<u>10,951</u>
Number of Households (2005):	<u>4,236</u>
Total General Fund Budget (FY2005-06):	<u>15,970,000</u>
Square Miles in City:	<u>2.2</u>
Square Miles in Watershed:	<u>1.1</u>
Percentage of Residential Land Uses in City:	<u>35 %</u>

NPDES Budget: (Attachment U-4 of the NPDES Permit
2004-05)

Program Management	\$ <u>12,070</u>
Public Information	<u>13,000</u>
Industrial/Commercial Inspections	<u>23,950</u>
Development Planning	<u>7,600</u>
Construction Inspections	<u>8,535</u>
Public Agency Activities	<u>460,520</u>
IC/ID Program	<u>8,800</u>

Total NPDES Budget: \$ 534,475

“Per Household” Expenditures FY2004-05: \$ 126.17

Note: The Regional Board estimates that the average City in Los Angeles County was investing \$18 per household in NPDES Compliance (2005 estimate)

Part I

Calculation of the Costs of Compliance with Trash, Metals and Bacteria TMDL

A. Cost of Studies

The Trash TMDL will require cities to monitor the effectiveness of their programs annually. It is difficult to estimate the costs of BMP compliance.

The Metals TMDL requires that the cities complete several special studies, including water quality monitoring.

1. *Water Quality Monitoring*

The TMDL will require additional monitoring. Recent cost estimates for the Los Angeles River Metals TMDL (prepared by the TMDL Public Works Officials) indicates that \$1,290,000 will be necessary in one-time costs to set up monitoring equipment and \$983,000 will be required annually for water quality laboratory analysis.

$$\begin{aligned}\text{Set Up Monitoring Costs} &= \$1,290,000 \\ \text{Annual Monitoring Costs} &= \$983,000 \times 5 \text{ years} = \$4,915,000\end{aligned}$$

Cost allocation formula: The cities have examined various cost allocation formulas for funding the monitoring and special studies. For purposes of this review we have divided the costs by the number of local agencies involved in the TMDL, each paying equal shares. The local agencies include Los Angeles County, Caltrans and 43 cities, for a total of 45 entities.

$$\underline{A.2. \text{Monitoring Costs "per city"} = (\$109,222)}$$

3. *Additional Studies*

The Metals TMDL lists a number of additional studies. The LA River Metals TMDL Public Works Officials have recommended that four additional studies be completed, including the participation in a Copper Site Specific Objective study. The Southern California Coastal Water Research Project and Tetra Tech, Inc., developed a detailed work plan in December of 2004. The cities should anticipate \$1.2 million in study costs.

The second study would be paired measurements of atmospheric deposition. The costs are estimated at \$590,000. The third study would be storm flow sampling, with costs estimated at \$530,000. The fourth study would review the effectiveness of Best Management Practices. This study is estimated to cost \$833,000 overall.

Study Costs Per City

Copper SSO	\$26,666
Atmospheric Deposition	\$13,111
Storm Flow Sampling	\$11,777
BMP Effectiveness	\$18,511

A.3 – Voluntary Study Costs “per city” = \$70,065

Implementation Plan – Non-Structural Programs

The Metals TMDL anticipated that cities could comply with 20% of the numeric waste load reductions by implementing the non-structural programs below. The Trash TMDL requires that cities reduce trash in storm water with a combination of non-structural and structural programs.

B. Street Sweeper Upgrades and Increases in Frequency of Sweeping

Both the Trash TMDL and the Metals TMDL recommend the use of upgraded dry-vacuum assisted sweepers. As a benchmark cities should report estimated costs above the NPDES Street Sweeping

NPDES Reported Street Sweeping Costs: \$ 53,580
Estimated Additional Costs: \$ 70,000

C. Increased Catch Basin Cleaning Costs/ Trash TMDL Compliance Measures

The Trash TMDL requires additional Catch Basin Cleaning, based on Priority areas:
\$ 1,000

Cities can estimate full-capture compliance with catch basin excluders/inserts. Number of Catch Basins n/a x \$2,100 = \$ n/a

D. Dry Weather Diversions

Cities may not be able to utilize dry-weather diversions, since the County Sanitation District is concerned about metals limits in their existing NPDES Permits. The Sanitation Districts' permits required their discharges to meet “end-of-pipe” California Toxics Rule metals standards in the receiving waters at their treatment plants. Cities should anticipate some type of metals removal process, in order to not impact the Sanitation Districts NPDES Permits.

Cities estimating dry-weather diversions costs should anticipate the costs of storage tanks or holding ponds, for discharge in "off-peak" hours. Cities may also want to review sewer capacity issues. For comparison purposes, the cost of the dry-weather diversion plan for the Santa Monica Bay Beaches TMDL is estimated at \$26 million for 27 diversions. These costs do not include storage or retention facilities construction.

Implementation/ Capital Improvements

The Metals TMDL anticipated the construction of sand filters in 20% of the urbanized watershed. Using your city's total square mileage in the watershed on page one, please perform the following calculations:

Sand Filter Construction Costs

Total Square Miles in Watershed 1.1 x 640 Acres per Square Mile = total Acres in Watershed 704

Total acres in Watershed 704 x 0.20 = 141 Acres for Sand Filters

Acres for Sand Filters 141 /50 acres per filter = Total Filters 3

Number of Sand Filters 3 x \$4.5 million * = Total Construction Costs of Sand Filters \$ 13,500,000

Sand Filter Land Acquisition Costs (Residential)

0.7 acres = 30,492 square feet / 6,200 square feet = 5 Single-Family Homes

Number of Sand Filters 3 x 5 Single Family Homes = 15
Total Homes Necessary

Total Homes Necessary 15 x Average April Home Costs (See Exhibit A)

\$ 675,000 = Estimated Land Acquisition Costs \$ 10,125,000

E. Infiltration Trenches

The TMDL anticipates the installation of infiltration trenches in 20% of the urbanized watershed. Using the total square mileage of watershed on page one, please perform the following calculations:

Infiltration Trench Construction Costs

Total Square Miles in Watershed 1.1 x 640 acres per square mile = Total Acres in Watershed 704

Total Acres in Watershed 704 x 0.20 = 141 Acres for Infiltration

Acres for Infiltration Trenches 141 / 5 acres per Trench = Number of Trenches 28

Number of Infiltration Trenches 28 x \$372,000 * = Total

Construction Costs of Infiltration Trenches \$ 10,416,000

Infiltration Trench Land Acquisition Costs (Residential)

0.07 acres = 3,049 square feet / 6,200 square feet = 1 Single-Family Homes

Number of Infiltration Trenches 28 x 1 Single-Family Homes = 28 Total Homes Necessary

Total Homes Necessary 28 x Average April Home Costs (See Exhibit A)

\$ 675,000 = Estimated Land Acquisition \$ 18,900,000

F. Relocation Assistance

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requires relocation assistance for homeowners when local government agencies purchase a home for Federal projects and for which federal funds are used. Similar State and local relocation assistance rules apply for non-federal funded projects. These payments include actual reasonable moving expenses or fixed moving expenses, purchase and rental assistance. Some cities pay greater benefits, however this analysis relies on the minimum payments required for owner-occupied single-family homes. This analysis relies on the \$22,500 housing assistance payment contained in State law, which should be considered low.

Total Number of Homes Required

Filters 3 x \$22,500 = \$ 67,500

Trenches 28 x \$22,500 = \$ 630,000

Total Estimated Minimum Relocation Assistance \$ 697,500

G. Program Costs

The Regional Board provided no cost increases, however we believe that additional technical staff will be necessary to oversee the studies, non-structural programs and capital improvement program necessary. Costs range from \$90,000 to \$120,000 annually.

H. Operations and Maintenance Costs

The infiltration trenches and sand filters will require additional maintenance costs during and after storm events. Public Works crews will be required to clear debris and prevent flooding to surrounding properties. We average 32 rainfall days in the watershed annually. Caltrans peer reviewed annual maintenance costs were \$2,910 per Austin Sand Filters. Annual costs for infiltration trenches were estimated at \$2,660 per trench.

Number of Filters 3 x \$2,910 = Annual O & M Costs \$ 8,730

Number of Trenches 28 x \$2,660 = Annual O & M Costs \$ 74,480

Total O & M \$ 83,210

Summary of TMDL Costs

A. Cost of Studies – One Time	
Estuary Study (Reach 1 Cities)	\$100,000
Water Quality Monitoring (set up)	\$22,291
Annual Monitoring (Five Years)	\$70,625
Copper SSO	\$20,750
Atmospheric Deposition	\$12,290
Storm Flow Sampling	\$11,041
BMP Effectiveness	\$17,354
Total Studies	\$254,351
B. Street Sweeping Upgrades (Annual)	\$ <u>53,580</u>
C. Increased Catch Basin Cleaning (Annual)	\$ <u>1,000</u>
Insert/Excluder Costs	\$ <u>N/A</u>
D. Dry Weather Diversions/ Compliance	Unavailable
E. Sand-Filter Costs	
Construction Costs	\$ <u>13,500,000</u>
Land Acquisition Costs	\$ <u>10,125,000</u>
Total Costs	\$ <u>23,625,000</u>
F. Infiltration Trench Costs	
Construction Costs	\$ <u>10,416,000</u>
Land Acquisition Costs	\$ <u>18,900,000</u>
Total Costs	\$ <u>29,316,000</u>
G. Minimum Relocation Assistance	\$ <u>697,500</u>
H. Program Costs	\$ <u>110,000</u>
I. Maintenance Costs (Annual)	\$ <u>83,210</u>

Total Number of Single-Family Homes Acquired for Implementation of the TMDLs

43

Part II

Financing the TMDL Program

This worksheet is divided into two options for those cities that do not have sufficient General Fund revenues or reserves to implement the TMDL program costs. Cities will be asked to determine the size of a municipal bond issue. The worksheet will assist you calculating the annual debt service to implement the TMDL program costs. The first bond will be required in 2007 (30% of the Total Costs), with a second bond required in 2012 (40% of the Total Costs). The remaining bond would be financed in 2020 (30% of the Total Costs).

The annual debt service is used to calculate the potential size of a Utility Tax to fund the bonds or the size of budget reductions or eliminations, if special storm water taxes are not approved by the 2/3rds requirement.

Bond Input

Total Funding Requirement (Costs of TMDL Program) - \$ _____

Inflation Rate – Assumed 3% annual

Bond Start Date – 2007 30% x Total Funding Required \$ _____
= \$ _____

Bond Start Date – 2012
40% x Total Funding Required \$ _____ = \$ _____

Bond Start Date – 2020
30% x Total Funding Required \$ _____ = \$ _____

The Total Funding Amount and the 1st, 2nd and 3rd Financing Amounts should be placed into Section A. Bond Input, of Table 1 of the Stanley R. Hoffman Associates Debt Service Model.

Operations and Maintenance

Initial Study Costs - \$ _____

Annual Monitoring Costs \$ _____

Annual O&M \$ _____

These costs should be placed into Section B, Operations & Maintenance, Table 1 of the Stanley R. Hoffman Associates Debt Service Model.

Annual Debt Service

The Debt Service Model will provide you with the annual debt service for the three bond issues.

Annual Debt Service 2007 - \$ _____

Annual Debt Service 2012 - \$ _____

Annual Debt Service 2020 - \$ _____

Maximum Debt Service (add all three above) - \$ _____

Utility Tax Necessary to Support TMDL Program Debt Service

Please calculate the annual revenues that 1% of your total Utility Tax Revenues would generate.

Annual Utility Tax Revenues \$ _____ x 0.1 = \$ _____

Maximum Debt Service \$ _____ / Annual Utility Tax Revenues

\$ _____ = _____ % Utility Tax to Support TMDL Program

Budget Reductions Necessary to Support TMDL Program Debt Service

It is necessary for cities to consider budget reductions, should the special taxes fail to gain the necessary 2/3rd voter approval. The worksheet focuses on "across the board" budget cuts in 2007, in order to gauge the magnitude of the cuts.

General Fund Budget (FY2006-07) \$ _____ / Annual Debt Service

\$ _____ = Percent Budget Reductions _____ %

Cities may wish to estimate the budget reductions in 2012 and 2020.

Part III

Budget Reductions/ Environmental Impacts

Cities should use the following checklist to determine how “across the board” budget reductions would reduce or eliminate existing public services and the resulting environmental impacts. Cities can calculate the budget reductions beginning in 2007 and examine the cumulative impacts in 2020.

2007 – Percentage Budget Reductions = _____%

Police/ Sheriff Services

Public Safety Budget (FY2006-07) = \$ _____

Reduction in 2007 = (FY2006-07 Public Safety Budget) \$ _____ x _____%

Budget Reduction = \$ _____ Total Public Safety Budget Reduction

Likely Environmental Impacts from Budget Reductions –

Reductions in daytime and nighttime patrol shifts, increases in crime rates (assaults, vandalism, graffiti), slower response time to emergency calls, officer safety issues due to reduced patrol sizes, less crimes solved, increases in vehicular speeding and increase in the physical deterioration of the community.

Fire/ Paramedic Services

Fire/Paramedic Services Budget (FY2006-07) = \$ _____

Reduction in 2007 = (FY2006-07 Fire/Paramedic Budget) \$ _____ x _____%
Budget Reduction = \$ _____ Total Fire/Paramedic Reduction

Likely Environmental Impacts from Budget Reductions –

Reductions in Fire/Paramedic services will result in delayed response times to medical and fire emergencies, increased likelihood of serious injuries or death, increased property losses from fire.

Public Works - Parks/Facilities Maintenance

Parks and Facilities Maintenance Budget (FY2006-07) = \$ _____

Budget Reductions (FY2007-08) = \$ _____

Likely Environmental Impacts from Budget Reductions –

Reductions or elimination of park, median and city building maintenance, tree trimming, resulting in deterioration of quality of life in community, impacts on property values, increased private property damage and injuries (from falling tree limbs).

Public Works – Street, Sidewalk and Traffic Signal Maintenance

Street, Sidewalk and Traffic Signal Maintenance Budget (FY2006-07) = \$ _____

Budget Reductions (FY2006-07) = \$ _____

Likely Environmental Impacts from Budget Reductions –

Reductions in Public Works staffing for street, sidewalks and signal maintenance programs, resulting in additional street deterioration, increased potholes, trip and fall hazards and inoperative traffic signals, increase in injuries from trip and falls hazards, increase in traffic accidents due to poorly maintained streets, increase in injuries and death from traffic accidents.

Graffiti Removal Program

Graffiti Removal Budget (FY2006-07) = \$ _____

Budget Reductions (FY2006-07) = \$ _____

Likely Environmental Impacts –

Reductions in Graffiti Removal programs will result in slower response times to graffiti removal requests, additional graffiti, decrease in the quality of life and property values, increase in gang activity, with an increase of injury and death.

Methodology

Cost Estimation/Environmental Impacts from the Los Angeles River TMDLs

Background

The Los Angeles Regional Water Quality Control Board is under a court order to complete a supplemental environmental review of the impacts of the Trash TMDL on Los Angeles River. The Regional Board's environmental review should be similar to environmental impact reports prepared on major projects, like general plan updates or specific plans.

The Regional Board staff has not adequately discussed the environmental impacts of the TMDL program on municipal budgets, the likely local government program reductions and the resulting impacts on the quality of life.

Determining the costs to local government of the TMDL program has been complicated by the evolving nature of the program and its requirements. The Trash TMDL for the Los Angeles River was adopted in 2001. The Metals TMDL was adopted in 2005 and the Bacteria TMDL is anticipated for adoption in 2007. The impacts of these TMDLs are becoming increasingly known, as subsequent TMDLs are adopted.

There are several known cost benchmarks, including the construction of a series of sand filters and infiltration trenches by Caltrans (see the Retrofit BMP Program). Some cities have completed or are underway with the construction of capital improvements for the Trash TMDL (trash nets, vortex-separation units, catch basin inserts, etc). The County and the City of Los Angeles have constructed several dry-weather diversions.

The Regional Board suggested a broad implementation plan for the Trash TMDL, which made it difficult for cities to estimate compliance costs. The Board extended full compliance to those local agencies that constructed vortex-separation units. However, these units have resulted in the generation of bacteria, which is subject to a later TMDL. The County demolished a unit in Culver City due to noise impacts complaints.

With the adoption of the Metals TMDL, the Regional Board began to suggest the likely TMDL compliance measures – including having cities construct sand filters and infiltration trenches. The City of Los Angeles entered into Memorandum of Understanding to complete the Bacteria TMDL on the Los Angeles River. The exact compliance measures have not yet been determined. However, the Board is proposing bacterial treatment facilities for runoff into the Ballona Creek, under the Bacteria TMDL for the Ballona Creek.

The State Water Board convened a panel of national experts in storm water to study whether it was feasible and practical to apply numeric effluent limits to urban runoff. The panel has concluded that numeric limits should not be applied to urban runoff, due to

a series of issues, including the high variability of storm flows in terms of duration and magnitude. These factors make it difficult to design treatment devices, since civil engineers require a "design storm" to appropriately size the planned treatment devices. The panel felt that it was unreasonable for local agencies to be held responsible for the largest storm events and that large events will have to bypass the treatment devices. The expert panel's recommendations have not been reflected in either the Trash or Metals TMDLs

The expert panel also suggested that urban runoff will require the construction of "treatment trains." This term refers to the construction of a series of devices, each designed to deal with a specific pollutant. Typical treatment trains construct gross solids and debris removal first (Trash TMDL). The second stage is typically metals removal by sand filters or infiltration trenches (Metals TMDL). The Caltrans study revealed that sand filters do not effectively deal with the dissolved fraction of metals and do not meet the California Toxics Rule (CTR) limits. Unless there are changes in the application of CTR, cities may need to construct micro-filtration or reverse osmosis units to reach the CTR limits. The third stage involves bacteria treatments, through the chlorination/dechlorination process or treatment with ultra-violet light or ozone.

Part I – Engineering and Planning Assumptions

Design Storm

These worksheets are based on data compiled from U.S. Environmental Protection Agency guidebooks and the real costs from a recent Caltrans pilot program that installed sand filters and infiltration trenches in Los Angeles County. In the definition of a full capture device, the draft Trash TMDL for the Los Angeles River specifies a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour storm in the sub-drainage area. The Metals TMDL for the Los Angeles River has no design storm. However, in the Implementation Section of the TMDL, Regional Board staff used cost estimates based on treating 0.5 inches of runoff while recognizing that Caltrans designed its sand filters and infiltrate trenches in its BMP Retrofit Pilot Program to handle up to one inch of runoff. The general SUSMP design storm for the urbanized area of the watershed is 0.75 inches.

Based on the premise that infiltration trenches and sand filters could be used to address the requirements of both the Trash TMDL and the Metals TMDL, and an assumption that cities would be required to exceed SUSMP requirements in order to comply with the TMDLs, the cost estimator is based on capturing and treating a one-inch rainfall storm event. The cost estimates include construction of the sand filters and infiltration trenches plus the necessary storage capacity to handle runoff from a one-inch storm event.

Implementation Schedules

Local government will be dealing with three time schedules mandated by the TMDLs. The Trash TMDL will require that cities fully comply in 10 years. The Metals TMDL requires compliance over a 22 period. This worksheet assumes that the cities will need to comply with the Bacteria TMDL during the same 22-year time period as the Metals TMDL. The chart below presents a comparison of the time schedules.

Trash TMDL Schedule

10% by 2008
20% by 2009
30% by 2010
40% by 2011
50% by 2012
60% by 2013
70% by 2014
80% by 2015
90% by 2016
100% by 2017

Metals TMDL Schedule

50% dry weather/ 25% wet weather

2020 – 75% dry weather/
2024 – 100% dry weather/ 50% wet weather
2028 – 100% wet weather

Compliance with Non-Structural Programs and Capital Improvements

The Trash TMDL provided the cities with a range of options from non-structural programs (additional street sweeping and catch basin cleaning) to structural programs (catch basin inserts & excluders, trash nets, vortex separators, etc.). The Metals TMDL estimated that cities would rely upon non-structural programs in 30% of the watershed, install infiltration trenches in 20% of the watershed, sand filters in 20% of the watershed and develop Integrated Regional Water Plans (IRWP) for the remaining 30% of the watershed. The Board did not provide cost estimates for the IRWP portion of the implementation plan. Dry-weather implementation costs were also not provided.

For purposes of this study we have assumed that infiltration trenches and sand filters will be installed in residential neighborhoods. The Regional Board supplied land use data that indicates that 52.05% of the watershed is residential. The Regional Board also estimated that residential areas account for 59% to 71.5% of the metals loads to the Los Angeles River. We believe that a high number of devices will be constructed in residential neighborhoods, due to the predominance of this land use in the watershed and the Regional Board's reporting on metal loads.

The study uses the average single-family home price as the default value. We have estimated land acquisition costs based on construction of sand filters and infiltration trenches in residential neighborhoods, since monthly pricing data is readily available on the average single-family home. It is recognized that some sand filters and infiltration trenches will be installed in multi-family neighborhoods. However, the "per lot" property values in these neighborhoods are generally higher than single-family "per lot" value, due to increased density. Cities with less than 40% residential land uses may wish to adjust the worksheet to install sand filters and infiltration trenches in industrial and commercial areas, as well as supply local property acquisition costs.

Average Residential Lot Sizes

We have assumed average residential lot sizes of 6,200 square feet based on GIS information on the watershed. Some cities may have lower average lot sizes and the worksheets can be adjusted for this information.

Sand Filter Assumptions

Neither the Metals TMDL, nor the Trash TMDLs contain specific recommendations on sand filter sizes and the size of drainage tributary areas. However, the TMDL for the San Gabriel River anticipated the construction of Austin sand filters to serve 50-acre drainage areas. We believe that this is a reasonable assumption for this study as well.

The per acre Adjusted Caltrans Cost Estimate is from Section 7.4.2 of the San Gabriel River Metals and Selenium TMDL staff report based on the installation of Austin sand filters, designed to capture one-inch rain events. This design is greater than the SUSMP requirement, but less than the open-ended Los Angeles River Metals TMDL requirement

to design devices to comply with water quality objectives for any sized storm. This construction cost was subjected to “peer review” during the Caltrans BMP Pilot Retrofit Program in January 2004. There may be some savings if projects are grouped and constructed together.

Sand Filter Retention Areas

The Metals and Trash TMDLs do not discuss the appropriate size of the retention areas, based on the requirements that all rain events be planned for. This cost estimate relies upon the “Preliminary Data Summary of the Urban Storm Water Best Management Practices – EPA-821-R-99-012, August 1999) in order to correctly size the retention area for a 50-acre retention facility. EPA assumes that 35% of the watershed is impervious.

However, analysis of data in the model used to simulate wet-weather metals loading from the **Los Angeles River watershed indicates that the average imperviousness of the non-forest parts of the watershed averages 45%.** Highly urbanized cities in the watershed may be 70% impervious surface. We have assumed 45% imperviousness for this review. Table 6-9 of the EPA report assumes the land required for a retention basin is 2%-3% of the impervious area in the drainage area. Using the 3% figure, the land required for a retention basin to serve 50-acres is 0.7 acres. We assume the 3% based on the requirement to have space for access and maintenance.

Infiltration Trench Assumptions

As with the sand filters, neither the Trash nor the Metals TMDL provides much direction on the size of infiltration trenches or the size of their tributary drainage areas. The Metals TMDL for the San Gabriel River anticipates the construction of infiltration trenches to serve 5-acre drainage areas. We believe this is a reasonable assumption for this study as well.

The per acre Adjusted Caltrans Estimate is from Section 7.4.2 of the San Gabriel River Metals and Selenium TMDL staff report and is based on one inch storm events. This design number is greater than the SUSMP requirement, but less than the Los Angeles River TMDL requirement to comply with water quality objectives for any sized storm event. This construction cost number was “peer reviewed” during the Caltrans BMP Pilot Retrofit Program in January of 2004. There may be costs savings if projects are grouped and constructed together. However, these costs savings may be negated by the increase in construction costs, since the Caltrans pilot projects were constructed for smaller facilities, instead of larger and more complex subwatersheds.

Neither the Trash nor Metals TMDL discusses the appropriate size of the retention areas, based on the requirement that all rain events be planned for. This cost estimate relies upon the “Preliminary Data Summary of the Urban Storm Water Best Management Practices – EPA-821-R-99-012, August 1999) in order to correctly size the retention areas for a 5-acre retention facility. EPA assumes that 35% of the average urban watershed is impervious. However, analysis of the data in the model used by the Regional Board to simulate wet-weather metals loading from the San Gabriel River watershed indicates that the average imperviousness of the non-forest part of the watershed is 45%. Table 9-6 of the EPA report assumes the land required for an infiltration trench and retention basin is 2%-3% of the impervious area in the drainage. We suggest using a 3% factor to allow for access and maintenance areas, as well as variable infiltration rates due to soils in a subwatershed. At 3%, the land required for infiltration trenches and equalization basins to capture and slowly release large storms to serve a 5-acre subwatershed that is 45% impervious would be .07 acres.

The analysis relates to locating infiltration trenches in single-family residential neighborhoods. It is reasonable to assume that a significant portion of infiltration trenches will be located in residential neighborhoods, since the TMDL assigns high metals loads to these areas. Single-family homes are also more cost-effective to purchase, as compared to multi-family and commercial uses, yielding more land per costs for the trenches. We have assumed average residential lots of 5,000 square feet in size.

Bacteria Treatment

It is anticipated that the Bacteria TMDL will require structural treatment or diversion of urban runoff in order to meet the REC-1 and REC-2 objectives in the Basin Plan for the Los Angeles River. We have relied upon installing bacteria treatment devices on the sand filters, in order to understand the magnitude of the costs.

Part II - Financing Assumptions

Cities will have to determine if they have sufficient General Fund reserves to fund the TMDL Program. Two basic financing options are included in this worksheet in case General Fund revenues or reserves are not sufficient. The first option revolves around the passage of voter approved special taxes to implement the new requirements. The second option involves reduction in existing local government budgets to fund the TMDL program.

Storm water taxes and fees must comply with Proposition 13, Proposition 218 and case law. The most recent case on storm water fees is *Howard Jarvis Taxpayers Association v. the City of Salinas*. The *Salinas* case affirmed the requirement that storm water fees be subjected to voter approval as a 2/3rds affirmative vote, when the City of Salinas added a storm water fee on their municipal services bill with a vote of the City Council.

Although there are several taxes that cities could consider, including parcel taxes and benefit assessments, this study examines funding storm water programs through the adoption of a utility tax. For watershed cities that have utility taxes, completion of the worksheet will be much easier.

For cities without sufficient General Fund Reserves, we have assumed that the cities will fund the TMDL program through the issuance of municipal bonds. These bonds would be phased in order to anticipate the requirements of the TMDL implementation schedules. Phasing of bonds will assist cities in planning for capital improvements, which require time for engineering design, purchasing property, bidding and construction.

We have assumed that cities will require 30% of the total funds beginning in Year One of the program (assume 2007 start date). This assumption is supported by the TMDL schedules, which require 50% compliance with the Trash TMDL by 2012 and compliance with 50% of the dry-weather and 25% of the wet-weather Metals TMDL limits by 2012.

We have assumed that the cities will need to finance a second bond; another 40% of the program costs by 2012, since cities must be in full compliance with the Trash TMDL by 2017 and 75% of the dry-weather requirement in the Metals TMDL by 2020. The Metals TMDL schedule becomes very aggressive in 2024 – requiring that cities meet 100% of the dry weather and 50% of the wet weather requirements. Cities must be in full compliance by 2028. We anticipate that the cities will require that the remaining 30% of the financing be in place by 2020.

Part III – Environmental Impacts from Reduced/Eliminated Services

Cities should be careful to translate budget reductions into direct environmental impacts to their community. The worksheet contains samples of the environmental impacts – such as increased vandalism or graffiti from reductions in patrol/sheriff services. Cities may want to expand the impacts to community services, library, senior center, child-care and other programs supported by General Fund revenues.

Statement before the Los Angeles
Regional Water Quality Control Board
NPDES Permit Workshop - November 10, 2011

By

Steve Myrter, Director of Public Works

City of Signal Hill

The U.S. EPA recently adopted principals for the restoration of the nation's urban water bodies in the Urban Waters Federal Partnership program. A core guiding principle of EPA is to ***"be open and honest, and listening to the communities...recognize their values and seek to understand environmental issues through their eyes. We will work from the bottom up rather than taking a top down, one-size-fits-all approach."*** The Regional Board is being asked by your staff to only issue a region wide MS4 permit and to deny the Los Angeles County Flood Control District, the Cities of Downey, Long Beach and Signal Hill, in other words, the agencies who filed separate ROWD's, their own applications for individual NPDES permits under the law. We urge you to reject this one-size-fits-all approach of your staff and embrace EPA's guiding principles.

Signal Hill's request for our individual permit is an opportunity for the Board to work with a small community that is taking seriously its responsibility to improve our local water quality and to address the unique circumstances confronting our community. Other cities have chosen to group together for their own reasons and we respect their decisions. We have chosen to apply for our individual MS4 permit for equally valid reasons and would hope that our decision is respected as well.

In June of 2006, Signal Hill submitted an individual ROWD/NPDES Permit application for permit coverage only for our respective jurisdiction. Our

application explained how Signal Hill is located in the geographic middle and completely surrounded by the City of Long Beach on all sides. Runoff originates in the upland portions of Signal Hill and flows directly into the City of Long Beach, where our City is proposing to install water quality monitoring stations in order to characterize our runoff. It is important to note that the Board has issued two individual NPDES permits to the City of Long Beach beginning in 1999 and that your staff is recommending issuing a third permit to the City of Long Beach.

In response to our June 2006 ROWD application, Regional Board staff concluded in their July 12, 2006 letter that our ROWD/Permit application was “incomplete.” Nowhere in the letter did the Executive Officer ever indicate that the Regional Board would refuse to issue an individual permit to Signal Hill. Instead, the Regional Board staff indicated the opposite, that the City was **“proposing some positive changes”** to our NPDES Permit, and that the Board Staff looked **“forward to working out these details with your Staff during the MS4 Permit Reapplication Process.”** (see the July 12, 2006 letter)

The City responded in a timely manner on September 12, 2006 to each of the points raised in the Executive Officer’s July 12th letter as to why Signal Hill’s ROWD was consistent with the requirements of federal law and why the ROWD satisfied the requirements of federal regulations, including EPA’s Interpretative Policy Memorandum. Signal Hill’s letter concluded that the City looked forward to working with the Executive Officer to address all relevant issues necessary and looked forward to the issuance of the NPDES Permit for the City of Signal Hill.

Unfortunately, Signal Hill’s letter was not responded to over the past five years. During this time, the City of Signal Hill has moved forward to implement new programs designed to insure compliance with our application for our individual NPDES Permit. Signal Hill has worked hard to implement our individual waste load allocation assigned by the Regional Board under the Los Angeles River Trash TMDL. We are pleased to report that our City is ahead of schedule at a 94% trash reduction rate, while the TMDL requires a 60% reduction rate this year.

Oil was discovered in Signal Hill in 1924 and this discovery ushered in several decades of heavy industry, including well drilling, with oil sumps, tank

farms and refining. These industries have left Signal Hill with a legacy of soil contamination and over 1,700 abandoned oil wells, including numerous leaking wells. Signal Hill formed its redevelopment agency in 1978 with the express intent of remediating these environmentally distressed properties. Since 1989, the Agency has re-abandoned over 92 wells and invested over \$15 million into soil remediation, ground water clean-up and oil well abandonment projects. Over one million barrels of oil are pumped annually in Signal Hill, creating unique issues for our community and the need for an individually tailored storm water programs. The City's historical legacy also dictates the need for an individual MS4 permit, in order to better tailor storm water programs for Signal Hill's unique industrial history and existing industries.

This unique industrial heritage and the problems associated with the City's petroleum and other heavy industries, led Signal Hill to apply for and receive its own stand-alone County Sanitation District. Although the Los Angeles County Sanitation Districts functions as a county-wide system for 77 municipalities, Signal Hill's Sanitation District #29 is a stand-alone entity, with its own board of directors, maintenance staff, budget, permits and fee structure. The application for our individual MS4 Permit is an example of the planning for that is necessary for the unique problems that confront our community.

Our City Council directed City staff to move ahead on a Storm Water Quality Master Plan, which will be a comprehensive plan for water quality in our community. Signal Hill has worked hard to improve water quality, including the installation of CDS units and 14 trash nets in the Hamilton Bowl. We have installed full capture devices in the majority of our 174 catch basins that drain into the Los Angeles River. We have also implemented SUSMP and LID requirements on dozens of developments, including state of the art infiltration devices on a concrete-batch-plant, which was recently studied by the National Academy of Sciences. We have moved forward implementing new programs, including additional inspections and have budgeted for the installation of two auto sampler monitoring stations this next year. The City is also designing a dry-weather diversion in order to address dry-weather requirements for the LA River Metals and Bacteria TMDL.

Issuing an individual permit to Signal Hill will not open up the flood gates to 88 ROWD's as suggested by your staff. Signal Hill's runoff is not co-mingled in some larger MS4 system. Issuing an individual NPDES Permit does not mean that the City of Signal Hill will halt its participation in important watershed and regional efforts to address water quality. Our City Manager has taken the lead in coordinating the 40 cities, Los Angeles County and Caltrans to complete the Special Studies on the Los Angeles River Metals TMDL. These special studies are now into their second of three planned study years, with a total investment of \$2.1 million from the 42 public agencies. We participated in the organization and administration of the coordinated monitoring plan and we participate the County's public education program.

Signal Hill is also leading a seven member group of cities in developing the Implementation Plan for the Los Cerritos Channel Metals TMDL, a TMDL adopted by the U.S. EPA in 2010. In addition, we are also participating in Jurisdictional Group One Group for the LA River Metals TMDL. Your staff is involved in all of these efforts. Your staff, as well as our neighboring cities, can attest that Signal Hill's is not only a willing participant in group planning efforts, but a leader of regional and sub-regional efforts to improve water quality.

The LAR Metals TMDL was adopted by the Regional Board in 2006 and assigned group waste load allocations to the Jurisdictional Groups. We commented to the Regional Board at the time that this requirement would have unintended consequences and would essentially make one city (or a small subset of cities) responsible for all of the cities in their Jurisdictional Group. This implementation scheme, combined with the current permit's requirement of "Joint and Several Liability," resulted in Signal Hill rethinking its participation in the larger system-wide permit.

The Regional Board staff has cited in the past what they believe are the relevant sections of the federal codes to argue that the Board has the discretion as the permitting authority to determine whether to issue the system-wide or jurisdiction-wide permit. This assertion is incorrect, since it is clear from a plain reading of the federal codes that cities have the express ability to submit

individual applications in conjunction with other MS4 operators, or alternatively, submit for a **“distinct permit application which only covers discharges from the”** individual city system in question.

40 CFR Section 122.26(a)(5) reads as follows:

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must:

(A) Participate in a permit application (to be a permittee or to be co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system; (or)

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.

Further, the federal codes make it clear that a city has the right to apply for and obtain their own individual NPDES Permit under Sections 122.26 and 122.333. The individual permit is a **“distinct permit application which only covers discharges from the municipal storm water sewers for which the operator was responsible.”** (Section 122.26(a)(3)(iii)(B). The federal codes are also clear that small cities, with populations of under 50,000 residents, have the right to be included in a system-wide permit, if they so choose. (Section 122.333)

We understand that the Regional Board intends to incorporate numeric limits from the various TMDLs into the upcoming permit. The Regional Board also intends to hold cities responsible for exceedances to water quality standards in permit language. We believe that these policies and permit language will result in a watershed of litigation and enforcement activity in the 2012 permit.

The Regional Board’s joint and several liability permit language has already led to litigation in the region under the 2001 permit. For example, the NRDC and the Baykeeper are suing the County of Los Angeles for violations to water quality

standards on the Los Angeles and San Gabriel Rivers based on monitoring station data. The County in turn has requested tolling agreements from 50 cities that are located upstream from the monitoring stations. The tolling agreements only place future County vs. Cities litigation in abeyance until the final outcome of this litigation. We believe this is the beginning of the “watershed of litigation” that many foresaw, where private parties are suing the cities and county, the county is suing the cities, and cities are suing other cities.

The Regional Board’s policies have raised the issue of what approach should local governments follow in achieving compliance with water quality standards and permit requirements. Signal Hill does not choose to be included in the system-wide permit for a variety of reason, including the unfair grouped waste load allocations, the Regional Board’s policy of holding one City accountable for all Cities (the Joint and Several Liability language in the permit) and the proposed incorporation of numeric limits from the various TMDLs into the upcoming permit, enforced by the receiving waters limitations requirement.

Signal Hill believes that we must monitor and characterize our stormwater and urban runoff in order to design programs that address our particular impairments. The “one-size fits all” approach of a system-wide permit breaks apart as it cannot adequately address the individual circumstances of Signal Hill. The characteristics of water quality vary based the mix of industrial, commercial and residential uses in our community, history of brownfield contamination, our proximity to major sources of airborne pollutants, the existing effort of our city to regulate runoff and the availability of storm water infrastructure to address water pollution, as well as other factors unique to Signal Hill.

Like the County of Los Angeles, which has applied to withdraw from their 2006 ROWD and now seeks an individual MS4 permit for the Los Angeles County Flood Control District, Signal Hill looks forward to working with you and the Flood Control District in a collaborative process during the upcoming Permit renewal process. Signal Hill looks forward to working with both the Regional Board and the City of Long Beach in designing and implementing our individual NPDES Permit.

Statement before the Los Angeles
Regional Water Quality Control Board
June 7, 2012 Board Meeting
By
Steve Myrter, Director of Public Works
City of Signal Hill

City of Signal Hill's Storm Water Quality Program Overview

City's Unique Geographic Characteristics

The City of Signal Hill (City) is a small community, 2.1 square miles in size, with a current population of 11,072. Our City is located in the geographic middle of, and completely surrounded by, the City of Long Beach. The Newport-Inglewood fault created the City's unique hillside profile with elevation ranges from 25 feet to 360 feet (mean sea level). As a result, surface runoff originates in the upland portions of the City and flow directly into the City of Long Beach. The north slope runoff flows into the Los Cerritos Watershed and the south slope runoff flows in the Los Angeles River Water Shed. The City is served by two unique flood control facilities; the Hamilton Bowl and the California Bowl. These two storm water retention facilities control major portions of the City's drainage and provide unique opportunities for urban-runoff capture, treatment, infiltration, and monitoring.

Oil was discovered in the City in 1921 and this discovery ushered in several decades of heavy industry, including well drilling with oil sumps, tank farms, and refining. These industries have left the City with a legacy of soil contamination and over 1,700 abandoned oil wells, including numerous leaking wells. The City formed its redevelopment agency in 1978 with the express intent of remediating these environmentally distressed properties. Since 1989, the Agency has invested over \$15 million into soil remediation, ground water clean-up and oil well abandonment projects. Oil operations within our City continue to this day with over 1 million barrels pumped annually.

The City's unique industrial heritage and the problems associated with petroleum and other heavy industries, led the City to apply for and receive its own stand-alone County Sanitation District. Although the Los Angeles County Sanitation Districts function as a

county-wide system for 77 municipalities, Signal Hill's District 29 is a stand-alone entity that includes all parcels in the community. The Signal Hill City Council serves as the Board of Directors. District 29 has its own maintenance staff, budget, permits, and fee structure. This stand-alone district provides Signal Hill with the ability to construct dry-weather division facilities to deal with urban runoff issues.

In summary it is this unique geographic and industrial heritage that the City's Storm Water Quality Program has been designed to address.

IMPLEMENTATION OF MS4 AND TMDL REQUIREMENTS

- ***Land Development Program:***

The Land Development Program is an important element of the City's Storm Water Program. Low Impact Development (LID) BMPs, to include infiltration, bioretention and biofiltration have been implemented for new development and redevelopment projects. Verification inspections are conducted for every site during and prior to completion of construction to ensure that the approved LID BMPs have been correctly installed. The City began implementing LID type projects in 2004 with the Las Brisas Affordable Housing Project, well before the current proposals by the Regional Board. In addition, yearly inspections are conducted at each site to ensure the LID BMPs are being maintained and continuing to function at their optimum level.

Land Development sites noted in the presentation: Las Brisas Affordable Housing (approved 2004), A&A Concrete (approved 2007), Fresh & Easy (approved 2009), Jack in the Box (approved 2009), Palm Business Park (approved 2009), US Bank (approved 2009), Fresh & Easy (approved 2010).

- ***Industrial/Commercial Facilities Program:***

Although the two cycles of industrial/commercial inspections required by the 3rd term MS4 permit have been completed, the City uses its existing Industrial Waste Discharge (IWD) Control Program to continue an active storm water compliance inspection program. Over 100 commercial/industrial facilities have IWD Permits, and one permit provision is regular inspections ranging from one to six times each year. These inspections are used as an opportunity to ensure storm water compliance. Consequently, over 200 storm water compliance inspections are conducted each year. Many of the illicit discharges investigated in the City (and subsequently eliminated) are first detected during routine IWD permit/storm water inspections.

- ***Los Angeles River Trash TMDL:***

The Los Angeles River TMDL is but one of a number of TMDLs that Signal Hill is required to implement. Currently the other TMDLs include the Los Angeles River

Metals TMDL, the Los Angeles River Bacteria TMDL, the Los Angeles River Estuary Bacteria TMDL, the Harbor Toxics TMDL, and the Los Cerritos Channel Metals TMDL.

- ***Hamilton Bowl Storm Water Detention Basin:***

The Hamilton Bowl Storm Water Detention Basin is a 15 acre flood control facility that is owned and operated by the Los Angeles Flood Control District. Approximately half of the City's storm water runoff flows to this facility where it is retained and ultimately discharged into the Los Angeles River.

When the Regional Board adopted the Trash TMDL in 2001, there were very few trash catching devices in existence. The only Board-approved devices at the time were large and expensive concrete vault systems known as continuous deflector systems (CDS). Signal Hill felt it was important to move forward on design and testing of a cost-effective trash capture technologies. Accordingly, Signal Hill worked closely with the City of Long Beach and Los Angeles County to develop the Hamilton Bowl Trash Capture System Project with the objective of evaluating the effectiveness of various devices designed to remove trash and debris from urban runoff.

Signal Hill submitted a grant application to fund the Hamilton Bowl Project in May 2002. The Project ultimately received grant funds with construction being completed in 2006. Since 2007 a total of 27 tons have trash has been removed for the urban water runoff that flows into the Hamilton Bowl.

- ***Catch Basin Trash Capture Devices:***

Through the Los Angeles Regional Integrated Regional Water Management Authority, the City received a grant to install trash screens on 175 storm water catch basin located within the Los Angeles River watershed. The installation of these screens was completed in August 2011, and has proven to be highly effective in preventing trash and debris from entering the storm drain system.

- ***City Bus Stop Cleaning Program***

The City funds a bus stop cleaning program which utilizes the Long Beach Conservation Core to clean over 60 individual City bus stops on a weekly basis.

- ***Street Sweeping Program***

The City funds and utilizes a street sweeping contractor to ensure that City streets are cleaning on a weekly basis.

- ***City Alley Cleaning Program:***

The City funds an alley cleaning program which has proven to be highly effective in eliminating trash and debris from finding its way into our street drainage gutters. This program was initially implemented over 20 years ago.

- **City's Used Oil Recycling Program:**

The City's recycling program includes encouraging the recycling of used oil and used oil filters. In addition to the City Yard, the City has two additional locations that accept used oil and used oil filters for recycling from City residents. The City also encourages the recycling of used oil, used oil filters, and other hazardous household waste (HHW) such as electronic waste, by promoting the various Round Up events throughout the Los Angeles County area via City Council announcements and information on the City's webpage.

Illicit Connections/Illicit Discharge (IC/ID) Elimination Program

The IC/ID Elimination Program is a highly active element of the City's Storm Water Program. This is due to the multiple avenues available in detecting IC/IDs, which include 1) the inspection process described above, 2) inspector reconnaissance while traversing the City, 3) referrals from Public Works field staff, and 4) referrals from the public, business community, and other agencies. The Public Works field staff is trained annually in IC/ID detection and elimination (in addition to Public Agency BMP training). Their participation in detection is particularly helpful, due to their daily outdoor presence throughout the City.

Once detected, IC/IDs are eliminated through an investigative process by the City's storm water inspector. If violations are observed during any investigation, a Notice of Violation (NOV) is issued to the Responsible Party (RP) and a timeline is given for compliance. The timeline can be immediate (e.g. an ongoing discharge to the MS4) or within one to two weeks (e.g. outdoor storage that requires proper containment). Follow-up inspections are conducted regularly until the RP has achieved full compliance. Second and third NOVs are issued if violations persist. However, due to the inspector's role in educating and assisting the RP in their path to compliance, continued noncompliance is rarely an issue.

The City's IWD Control Program also aids the IC/ID Program. In cases of illicit discharges involving waste water when the RP wishes to continue discharging, the RP is required to obtain an IWD Permit. The permit then requires the discharge to be directed into the sanitary sewer system (with proper pretreatment). The IWD program also promotes the prevention of IC/IDs, by requiring proper sanitary sewer connections for any new businesses that plan to discharge waste water.

IC/ID investigations noted in the presentation: 12/27/2011 – 2420 E 28th St, Rocco's Deli Italiano, 9/20/2011 – 2508 N Palm Dr #200, Lalonde Equipment Rental, 4/5/2011 – 2501 Orange Ave, Power Trip Rentals, 1/18/2011 – 1800 E Spring St, Hooman Nissan.

Public Information and Participation (PIP) Program

In addition to the requirements of the 3rd term MS4 permit, the City incorporates additional efforts in its PIP Program. This includes nontraditional advertising, such as providing educational materials at distributional “point-of-purchase” (POP) locations. POP locations include retailers in the automotive, nursery, pool maintenance, and hardware businesses. The City’s PIP Program also partners with the Used Oil Recycling Program, which was used recently to develop an advertisement (“Celebrate Earth Day Everyday”) that was published in the local newspaper. The ongoing Mayor’s Cleanup Campaign is conducted throughout the year and the event information is advertised on the local newspaper. The City has also provided outreach materials and interactive presentations at a variety of community events, such as “National Night Out”, the “Family Festival”, libraries, and schools.

REGIONAL LEADERSHIP IN STORM WATER QUALITY

The City has demonstrated regional leadership by strongly implementing and enforcing the MS4 permit. The City took a leadership role in the organization of 40 cities, Los Angeles County, and Caltrans in the Los Angeles River Watershed to address the Los Angeles River Metals TMDLs. Although not all cities agreed to support special studies related to the Los Angeles River Metals TMDLs, Signal Hill ultimately convinced 35 of the cities, the County, and Caltrans to fund critical special studies.

The City led in the organization of Jurisdictional Group 1 for the Los Angeles River Metals TMDLs and accommodated the withdrawal of the City of Los Angeles and the County of Los Angeles by organizing the cities pursuant to MOAs with the Gateway Council of Governments. Also, the City of Signal Hill organized cities within the Los Cerritos Channel Watershed to work with the EPA through MOAs with the Gateway Authority JPA and to work with the Regional Board on an Implementation Plan.

The City has had a long, productive working relationship with the City of Long Beach, since our drainage flows through this community. We will continue to work with the City of Long Beach, which was granted a separate permit in 1992. The Cities of Long Beach and Signal Hill will need to work together on the implementation of the Los Angeles River Bacteria TMDL, the Los Angeles River Estuary TMDL, and the Harbor Toxics TMDL. The City of Long Beach and the City of Signal Hill are currently working together on the Los Cerritos Channel Metals TMDL.

PROPOSED FY 2012-13 ENVIRONMENTAL PROGRAMS BUDGET

The City allocated a total of \$650,510 out of the General Fund and an additional \$466,000 out of the RDA Fund in this fiscal year to achieve compliance with mandated NPDES/TMDL storm water quality programs. Staff estimates the total cost to the City to maintain compliance with these programs in FY 2012-13 at approximately \$870,000 or a City resident per capita cost of \$78.

City of Signal Hill

Stormwater Quality Program





Presentation Outline

- Storm water quality program addresses Signal Hill's unique characteristics
- Proactive implementation of MS4 and TMDL requirements
- Regional leadership in addressing storm water quality
- City's FY 2012-13 proposed Environmental Programs budget



Signal Hill's Unique Geographic Characteristics

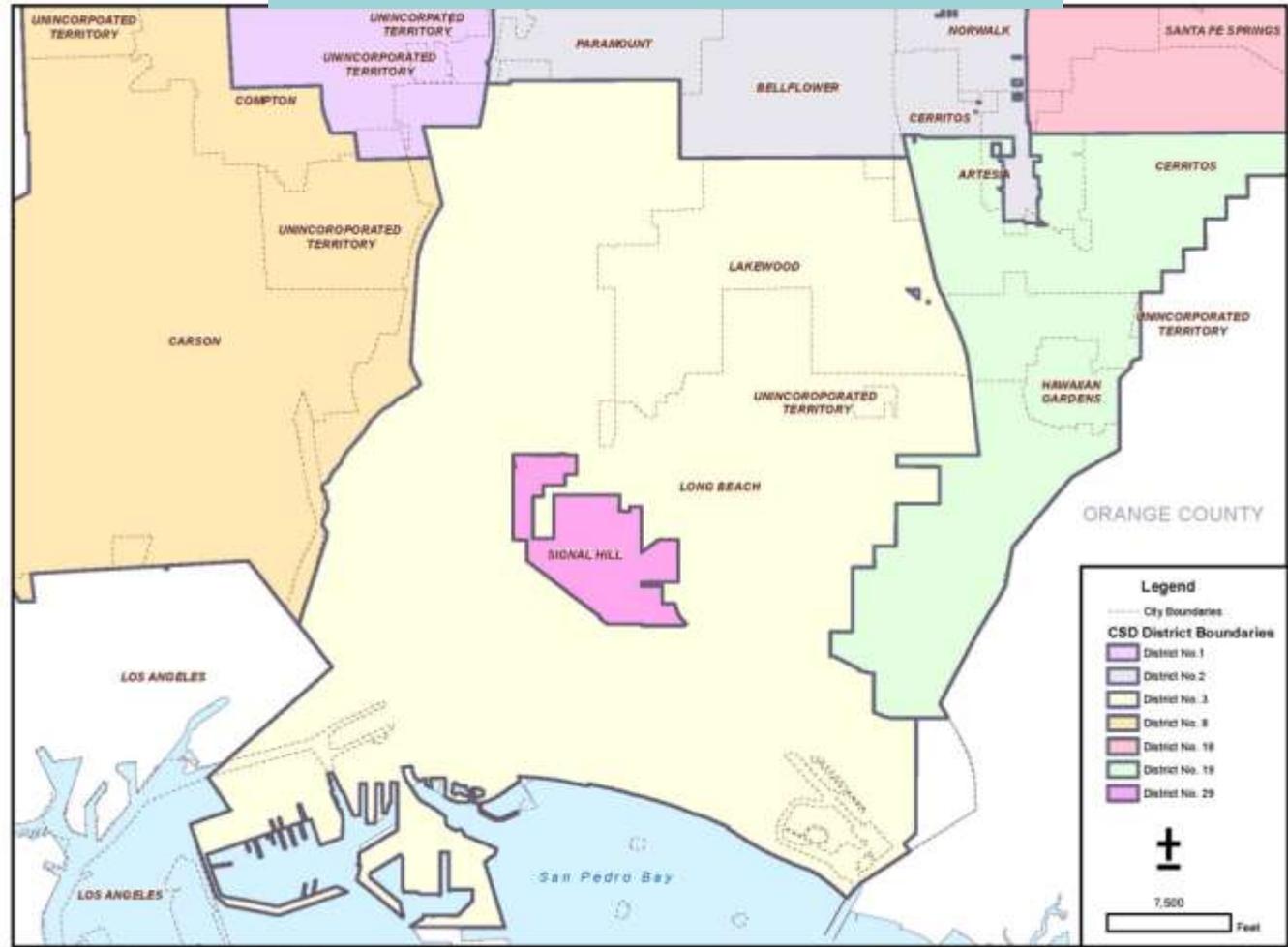
- Population of 11,072
- 2.1 square miles in size
- Surrounded by City of Long Beach
- Unique geology due to Newport Inglewood Fault
- Surface drainage to 2 Watersheds
- 85 years of oil exploration/production
- Oil production continues with over 1 million barrels pumped annually





Signal Hill's Unique Geographic Characteristics

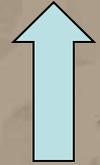
LACSD Boundary Map



- LA County Sanitation Districts is a county-wide system that serves 77 municipalities
- LACSD services Signal Hill as a stand alone District District No. 29
- District Boundary that of City Boundary

City Topography Map

City elevation range: 25 ft to 367 ft



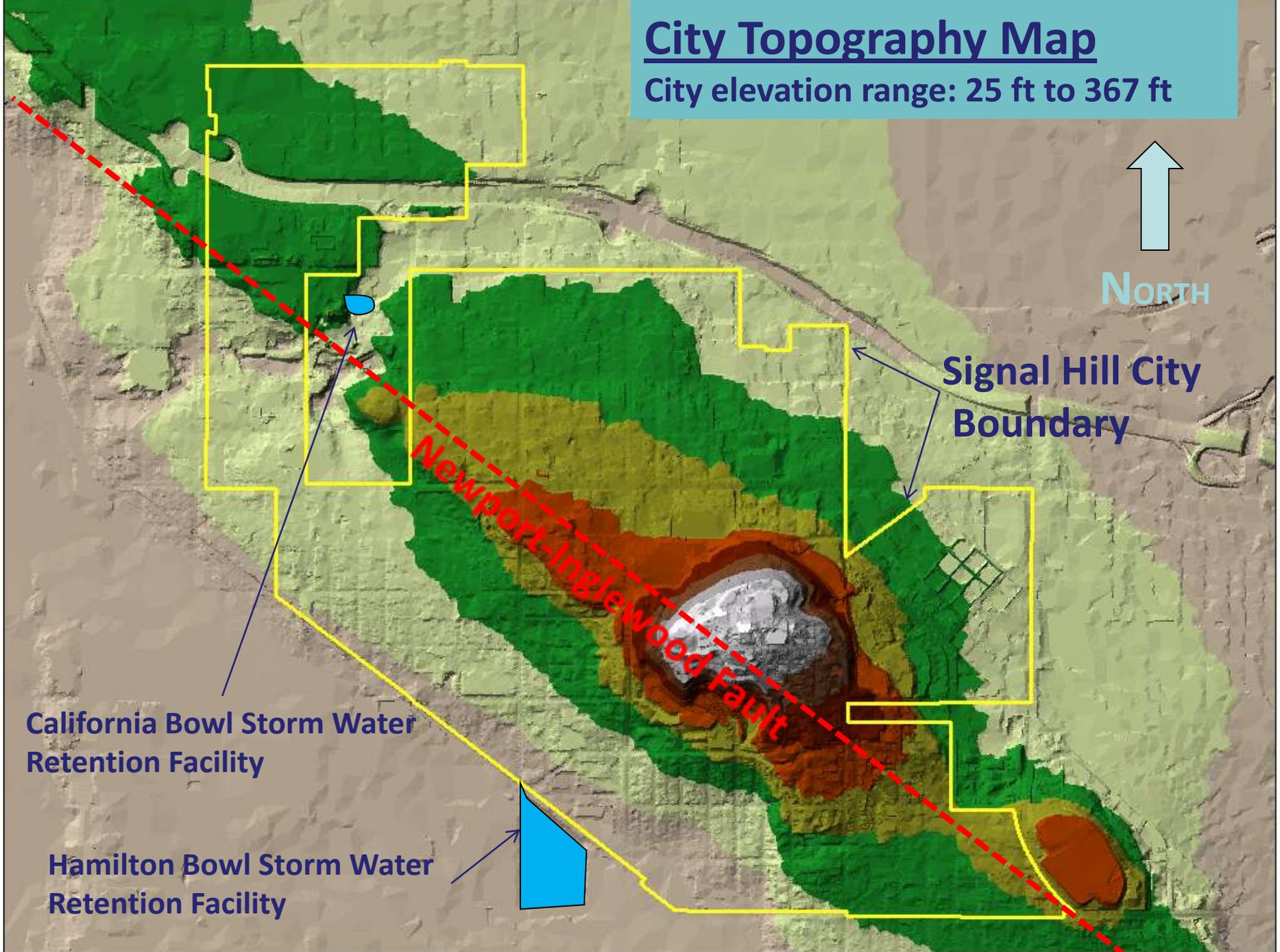
NORTH

Signal Hill City
Boundary

Newport-Inglewood Fault

California Bowl Storm Water
Retention Facility

Hamilton Bowl Storm Water
Retention Facility





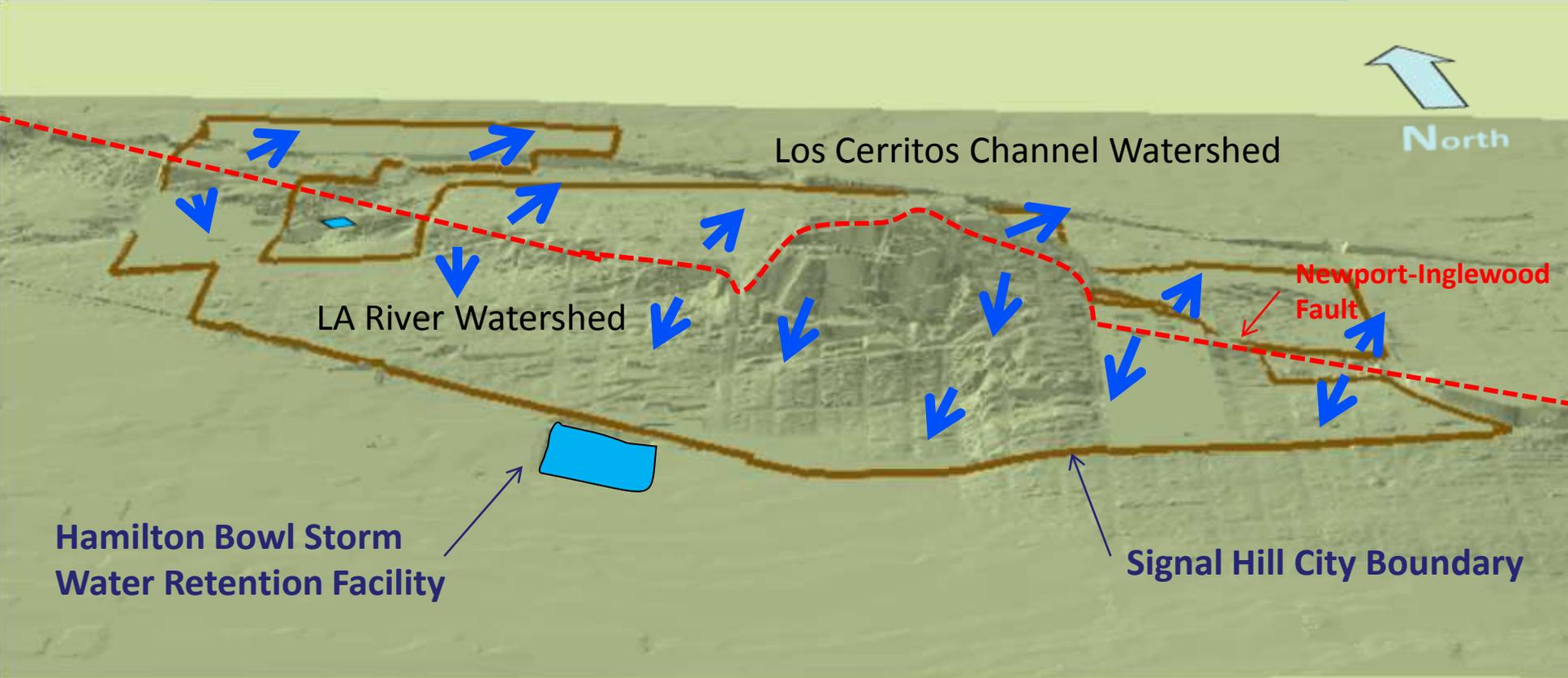
Hamilton Bowl Storm Water Retention Facility





Signal Hill's Unique Geographic Characteristics

City Surface Water Drainage / Watersheds



Los Cerritos Channel Watershed



LA River Watershed

Newport-Inglewood Fault

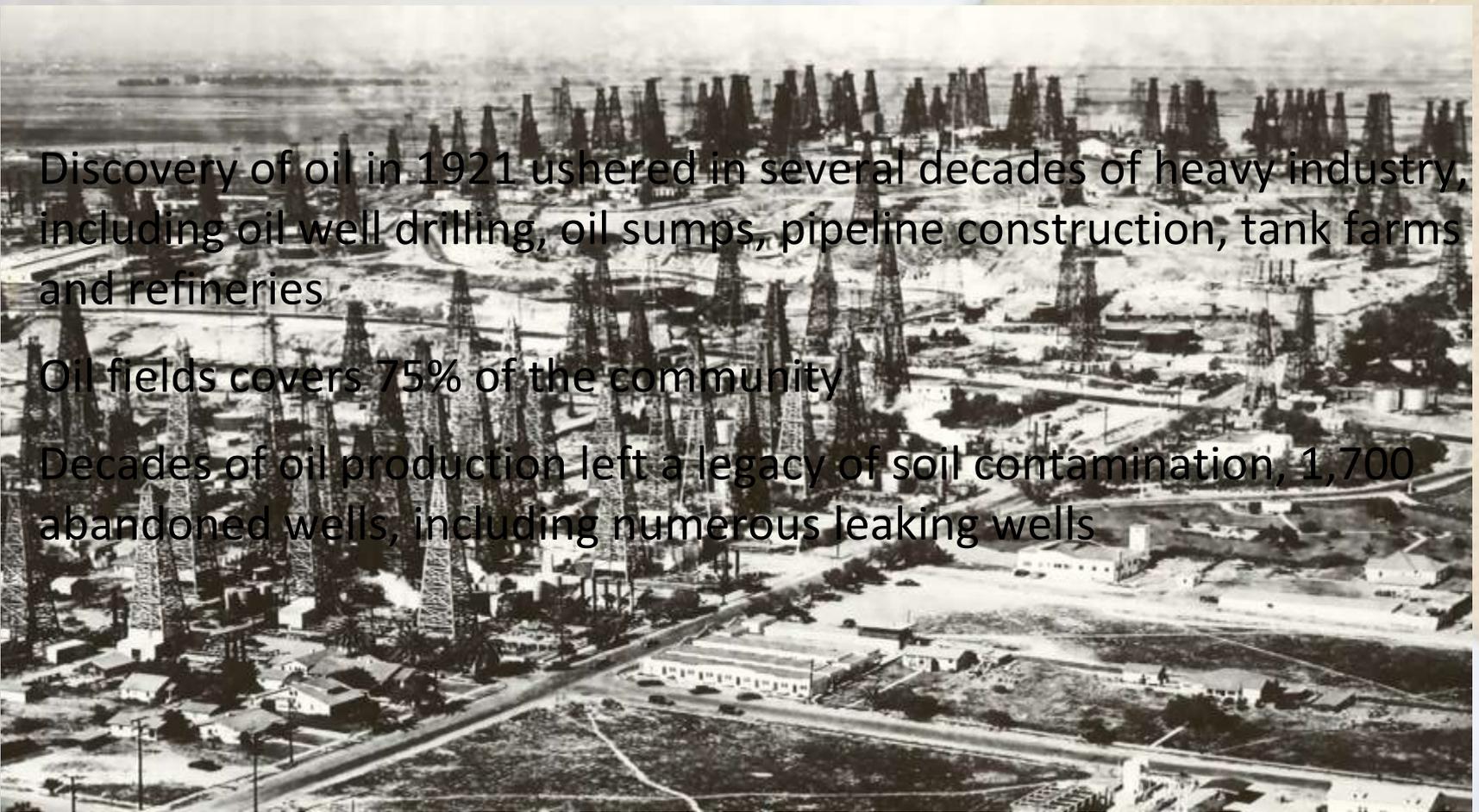
Hamilton Bowl Storm Water Retention Facility

Signal Hill City Boundary



City's Oil Production Legacy

- Discovery of oil in 1921 ushered in several decades of heavy industry, including oil well drilling, oil sumps, pipeline construction, tank farms and refineries
- Oil fields covers 75% of the community
- Decades of oil production left a legacy of soil contamination, 1,700 abandoned wells, including numerous leaking wells



Late 1920's



City's Oil Production Legacy

Current Oil Production



- Redevelopment Agency formed in 1974 to deal with oil production legacy issues
- Since 1989 the Agency has invested \$15 million in soil remediation, ground water clean-up and 92 well re-abandonments
- Over 600 active and reserve wells; 1 million barrels of production annually

City of Signal Hill

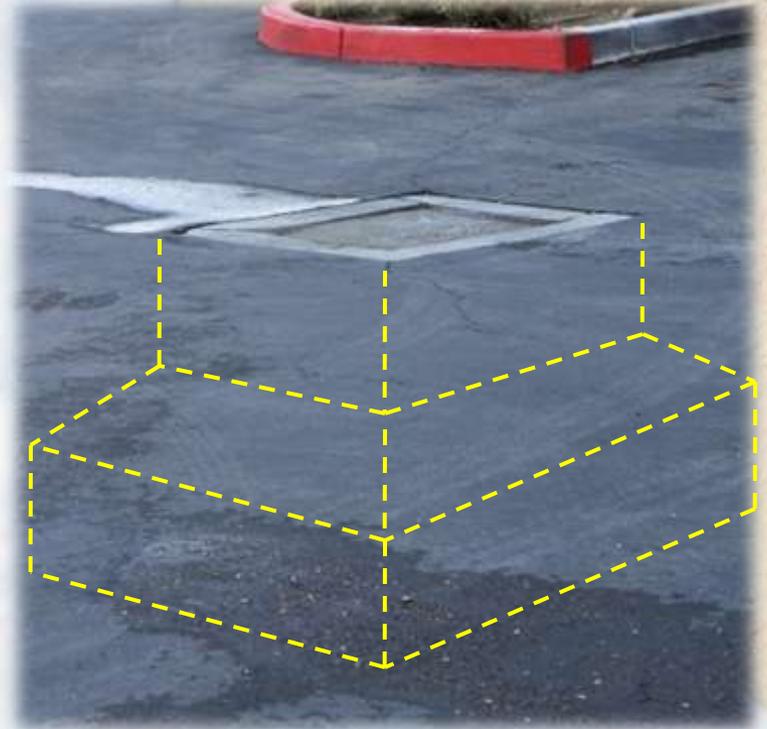


Proactive Implementation of MS4 and TMDL
Requirements



Stormwater Treatment

Residential



Infiltration System
Las Brisas Affordable Housing
California St, 2004



Stormwater Treatment

Industrial

A&A Concrete – Patterson St, 2007



Infiltration Basin Perimeter



Infiltration Trench



Stormwater Treatment

Commercial

Fresh & Easy - Cherry Ave, 2009



Underground infiltration system



Stormwater Treatment

Commercial

Jack in the Box – Spring St, 2009



Bioinfiltration Basin



Stormwater Treatment

Commercial

Palm Business Park – 2445 N. Palm Drive, 2009



2nd
System

Proprietary Biotreatment



Stormwater Treatment

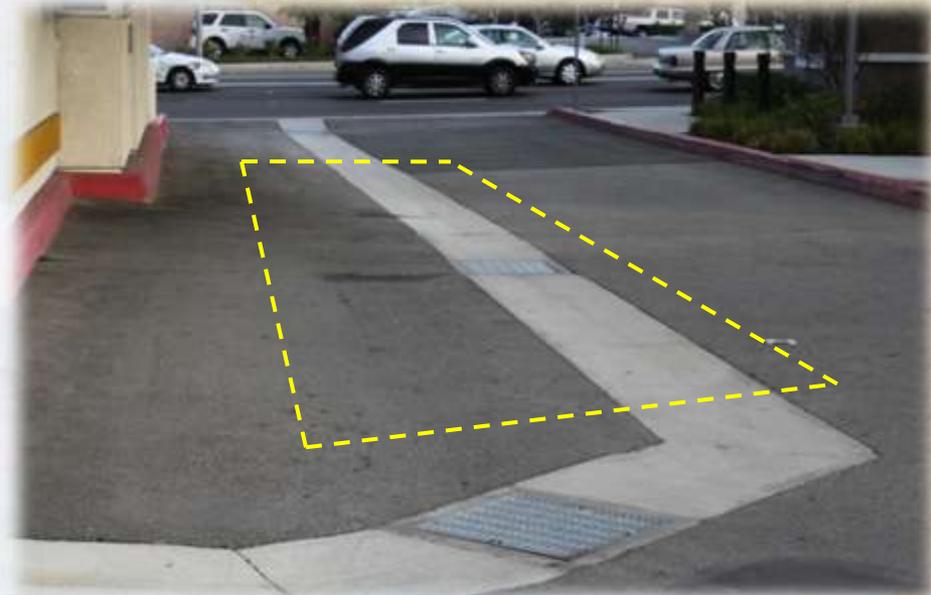
Commercial

US Bank – Cherry Ave, 2009

Construction



Finished

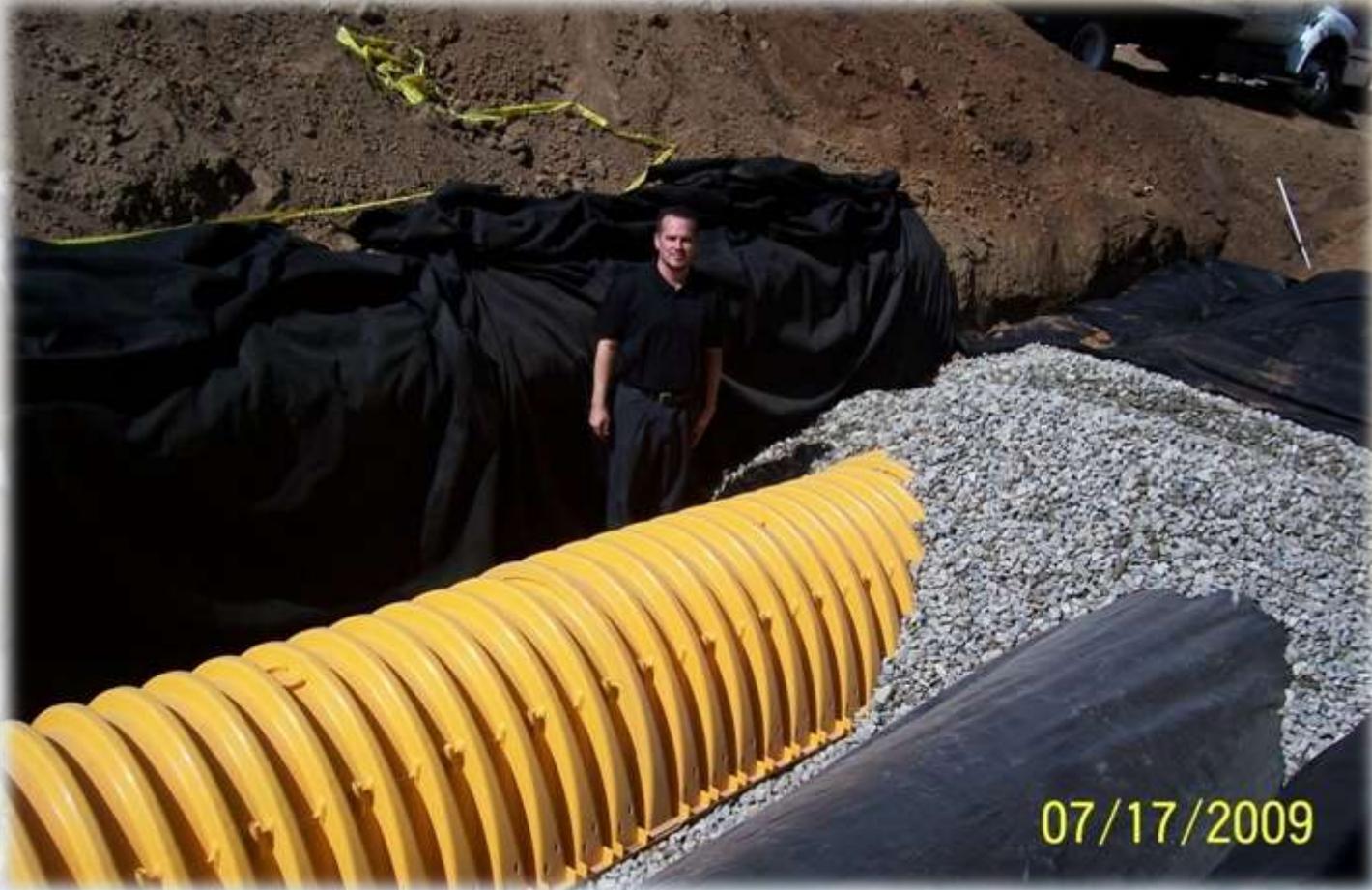


Infiltration Basin



Stormwater Treatment

Commercial



For Scale



Stormwater Treatment

Commercial

Fresh & Easy - Lime Ave, 2010



Bioinfiltration Planter



Stormwater Treatment Construction



Sediment Controls

Orizaba Ave



Stormwater Treatment Construction



Sediment Controls

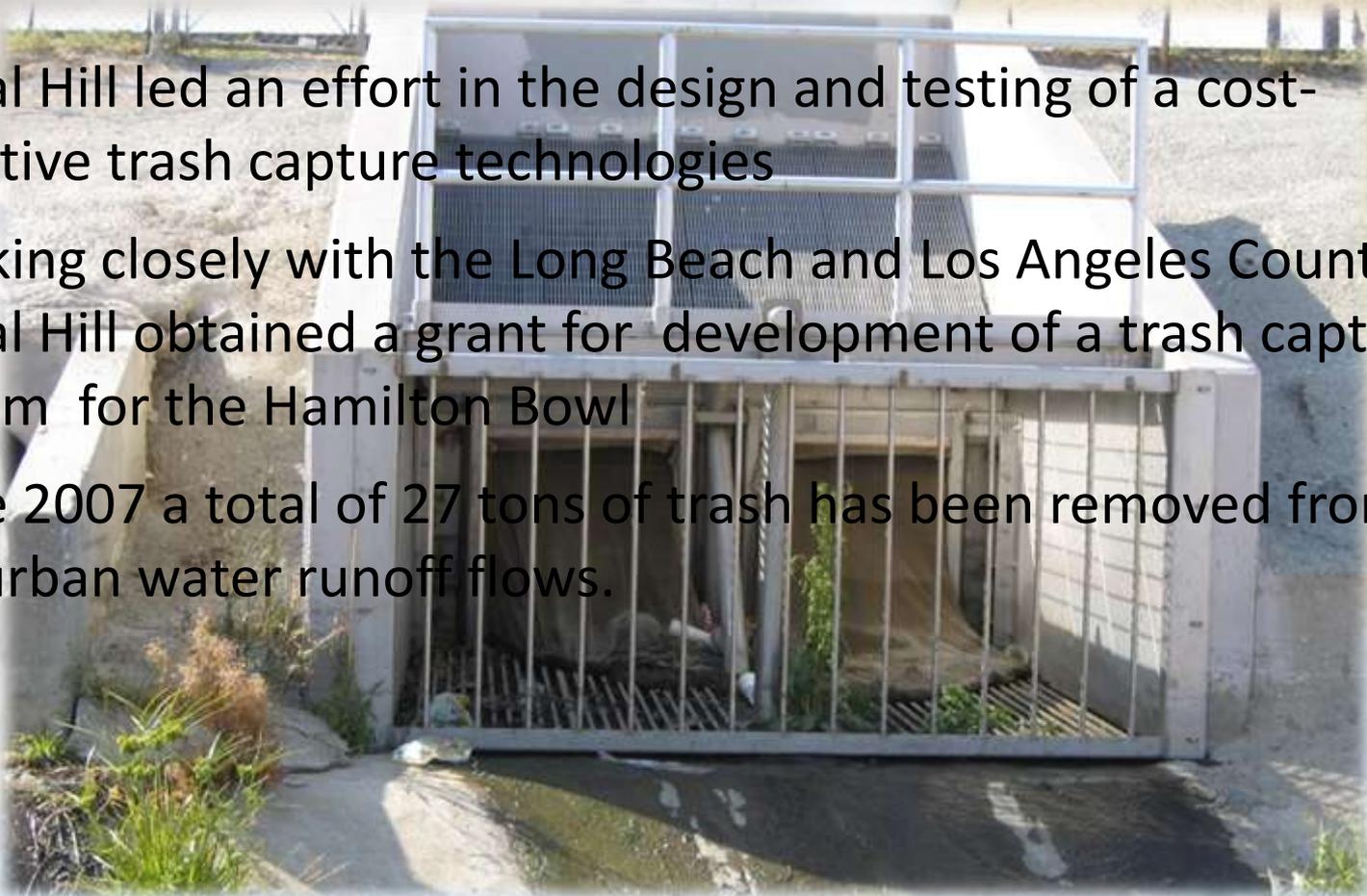
California Ave



Stormwater Treatment

Trash Capture

- Signal Hill led an effort in the design and testing of a cost-effective trash capture technologies
- Working closely with the Long Beach and Los Angeles County Signal Hill obtained a grant for development of a trash capture system for the Hamilton Bowl
- Since 2007 a total of 27 tons of trash has been removed from the urban water runoff flows.



Hamilton Bowl



City's Alley Cleaning Program

- 20-year program
- Performed monthly by Public Works staff





Bus Stop Cleaning Program

- Contract with Conservation Corps of Long Beach – weekly cleaning of 60 bus stop locations
- Contract with Shelter Clean Services – weekly cleaning of 18 bus stop shelters





Street Sweeping Program





Stormwater Treatment

Trash Capture



Automatic Retractable Screens



Connector Pipe Screens



Used Oil / Haz-waste Collection

- City Residents, Businesses, and Contractors may drop off used oil and other household hazardous waste material directly to the City's corporation yard.
- City staff ensures materials are properly disposed of.





EDCO Recycling and Transfer Station

- Recyclables
- Green Waste
- Construction Debris
- E-Waste
- Household Hazardous Waste
- Residential/commercial Refuse



City of Signal Hill

Stormwater Inspections

Illicit Connection/Discharge Elimination





Stormwater Inspections

Stormwater inspectors conduct over 200 inspections annually



Examples of noncompliance issues at industrial/commercial facilities, detected (and abated) due to the City's continued inspection activities



Active and Continuing IC/ID Program



NOV Issued [12-2011]

E. 28th St



Active and Continuing IC/ID Program



09/20/2011



09/20/2011



09/FEB/2011



NOV Issued [9-2011]

N. Palm Dr



Active and Continuing IC/ID Program



NOV Issued [4-2011]

Cerritos Ave



Active and Continuing IC/ID Program



NOV Issued [1-2011]

Spring St



Point of Purchase (POP) Outreach

General stormwater educational pamphlet displayed at front counters of local automotive shop and retail landscaping establishment





General Public Outreach

Annual bi-lingual outreach to residents regarding
“First Flush” via utility bill insert

The best thing one can do when it is raining, is to let it rain. *M. M. Longtin*

The rainy season in Southern California is short yet vital and every drop of water is important! With the rainy season already here, it is important to prepare our homes and environment for rain.

Due to the lack of rain during the summer, there are higher concentrations of pollutants and trash on the ground. The rain storm picks up the trash and pollutants and washes them out to the nearest storm drain. This “flush” of water can cause flooding or pollute the waterbody it goes to. Thus, accumulation of trash and pollutants can harm aquatic life and threaten our water supply.

We are asking for your help to prevent storm water pollution by:

- Clearing your yard, roof & yard rains as well as gutters of leaves and debris. (Remember to recycle green waste.)
- Do not apply herbicides or pesticides before a predicted rainstorm.
- Picking up trash & animal droppings, and discarding in the trash.
- Fixing any leaks on your car.
- Covering your trash cans & keeping chemicals, lubricants, and equipment under cover to avoid polluting runoff.
- Recycling hazardous waste, including used oil and filters at local events. Check www.2006cleanla.com for events near you.

Storm Drains Are For Rain Only

Signal Hill Stormwater Pollution Prevention Program
(562) 989-7353
www.cityofsignalhill.org

“Lo mejor que uno puede hacer cuando esta lloviendo, es dejar que llueva” *M. M. Longtin*

La temporada de lluvia en el sur de California es corta pero vital y cada gota de agua es importante! La temporada de lluvia ha llegado y es importante preparar nuestros hogares y medioambiente para las lluvias.

Debido a la falta de lluvia durante el verano, hay altas concentraciones de contaminación y basura en el piso. La lluvia levanta la basura y contaminación y se las lleva a la alcantarilla de agua pluvial mas cercana. Este deslave de agua puede causar inundación y puede contaminar el agua a donde se dirige. Así la acumulación de basura y contaminación pueden dañar vida acuática y a nuestra agua potable.

Le pedimos su ayuda para prevenir la contaminación de agua pluvial haciendo lo siguiente:

- Recoja las hojas de árboles y desperdicios de su jardín, techo, alcantarillas y de la basquetra. (recuerde de reciclar basuras verde.)
- No aplique pesticidas y herbicidas antes de un pronostico de lluvia.
- Recoja basura y desperdicio de animal y desechelos a la basura.
- Arregle goteos de aceite de su carro.
- Mantenga sus botes de basuras, químicos, lubricantes y equipo cubierto para prevenir deslave contaminado.
- Recicle basuras peligrosas, incluyendo aceite usado y filtros de aceite en eventos locales. Visite www.2006cleanla.com para eventos cerca de usted.

Las alcantarillas de agua pluvial son para lluvia solamente

Signal Hill Stormwater Pollution Prevention Program
(562) 989-7353
www.cityofsignalhill.org

Participate in community events offering
interactive stormwater pollution prevention
presentations





Regional Leader Addressing Storm Water

- Signal Hill has demonstrated regional leadership by strongly implementing and enforcing the MS4 permit.
- The City also demonstrated regional leadership by organizing the County, Caltrans, and the 40 cities in the Los Angeles River Watershed to address the Los Angeles River Metals TMDLs.
- Although not all cities agreed to support special studies related to the LA River Metals TMDLs, Signal Hill ultimately convinced 35 cities, the County, and Caltrans to fund critical special studies.



Regional Leader Addressing Storm Water

- Signal Hill organized Jurisdictional Group 1 for the Los Angeles River Metals TMDLs and accommodated the withdrawal of the City of Los Angeles and the County of Los Angeles by reorganizing the Cities pursuant to MOAs with the Gateway COG.
- The City also organized the cities within the Los Cerritos Channel Watershed to work with EPA through MOAs with the Gateway Authority and to work with the Regional Board on an Implementation Plan.
- The City maintains a strong partnership with the City of Long Beach



City of Signal Hill

Proposed Environmental Programs Budget – Fiscal Year 2012-13



Proposed Environmental Program Budget - FY 2013

Acct. No.	Budget Item Description	Proposed FY 12/13 Budget	Comments
510	Personnel	\$ 63,010	
309	Trash Reduction TMDL	\$ 74,575	Storm Water Runoff Trash Capture
347	Annual MS4 Permit Fee	\$ 5,000	Public outreach required per the MS4 Permit
355	Legal Services	\$ 50,000	
356	Storm Water Quality Contract Services & Technical Studies	\$427,000	Includes expenditures required for special studies for newly implemented and proposed TMDL's
372	Restaurant /Industrial Waste Inspections	\$ 44,000	Cost offset by fees
376	Street Sweeping	\$150,400	
	Bus Shelter Cleaning	\$ 31,000	Cost offset by Proposition A
440	Recycling and Haz-Waste	\$ 24,250	
Proposed FY 12-13 NPDES Budget:		\$869,235	

Water Quality Technical Studies Budget

Sub-Acct. No.	Item Description	Budget FY 12/13	Comments
356.1	Current Storm Water Permit Administration	\$ 48,000	<i>On-going annual Expenses</i>
356.2	New Storm Water Permit Implementation	\$120,000	<i>Includes Additional Monitoring & LID Ordinance Development</i>
356.3	LA River Metals TMDL	\$ 22,000	<i>Studies & Implementation Plan</i>
356.4	LA River Bacteria TMDL	\$ 15,000	<i>Studies & Implementation Plan</i>
356.5	LA River Estuary Bacteria TMDL	\$ 20,000	<i>Studies & Implementation Plan</i>
356.6	LA Harbor Toxics TMDL	\$ 20,000	<i>Studies & Implementation Plan</i>
356.7	Los Cerritos Channel Metals TMDL	\$ 17,000	<i>Studies & Implementation Plan</i>
357.8	Hamilton Bowl Low Flow Diversion	\$ 30,000	<i>Preliminary Engineering Phase</i>
357.9	Water Quality Master Plan	\$135,000	<i>Phase 1 & 2</i>
Total Contracts & Technical Studies =		\$427,000	



FY 12/13 Budget Summary

- Final FY 2011-12 Environmental Program expenditures projected at \$659,000
- Proposed FY 2012-13 Environmental Program expenditures of \$870,000
- Per capita cost of \$78



City of Signal Hill

Thank You!



Santa Monica Bay Beach Bacteria Total Maximum Daily Load Jurisdictional Groups 5 & 6
El Segundo Manhattan Beach Hermosa Beach Redondo Beach Torrance

July 23, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comment Letter – Draft Los Angeles County MS4 NPDES Permit

Dear Madam Chair and Members of the Los Angeles Regional Water Quality Control Board:

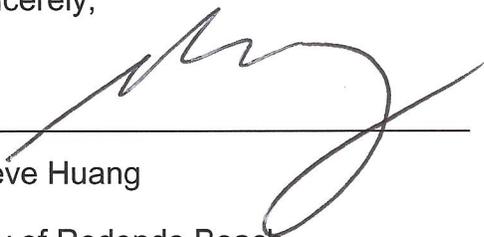
The Cities of Redondo Beach, Manhattan Beach, Hermosa Beach, Torrance and El Segundo are responsible agencies (Agencies) of Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) Jurisdictional Groups 5 & 6. These Agencies have been working jointly to implement BMPs toward complying with the provisions of the SMBBB TMDL. The Cities of Manhattan Beach and Redondo Beach as Primary Jurisdictions have been designated as co-Chairs of Jurisdictional Groups 5 and 6, respectively, with authority to correspond on behalf of the group regarding the draft MS4 NPDES Permit.

The forty-five day review period to provide written comment on this 500-page permit is completely inadequate and does not provide sufficient time for multiple city departments to review and consider the implications of the new requirements and to provide substantive comments, nor has it given us sufficient time to inform City Councils of the implications prior to submittal of these comments. Given the time allotted we have prepared some specific comments to the draft tentative MS4 Permit and they are included as Attachment A to this letter. In addition, we want to express our support and concurrence with the comments being provided by the LA Permit Group directly.

We urge the Los Angeles Regional Water Quality Control Board to issue a second draft Tentative Order with an additional review period to allow permittees a total of 180 days to discuss and review the full implications of the draft MS4 NPDES Permit. The hearing on the

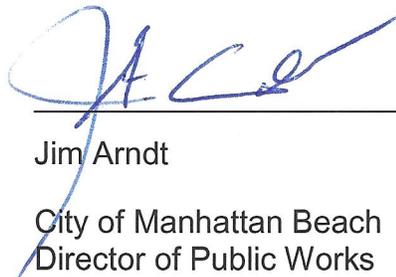
Permit should also be moved to a time after the League of Cities Conference so that elected officials and city managers have the opportunity to participate.

Sincerely,



Steve Huang

City of Redondo Beach
City Engineer/Chief Building Official



Jim Arndt

City of Manhattan Beach
Director of Public Works

Attachments: Attachment A: Detailed Comments

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank “A” - High priority comments of particular concern to the south Santa Monica Bay beach cities:

Redondo Beach, Manhattan Beach, Hermosa Beach, Torrance

Rank “B” - High priority comments generally applicable to most Permittees

Rank “C” - Administrative issues that need to be resolved

Rank	Permit section reference	Pages	Comment	Recommended change
A	Attachment E, IV.C.7	E-8	<p>Both the current permit monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>This places sites that are currently being monitored weekly at a higher potential for non-compliance with the permit because the SMBBB TMDL limitations is zero during the summer dry weather compliance period.</p> <p>Paragraph II.D.b of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 time per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5</p>	<p>The shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. At a minimum paragraph D.1.b should be removed and paragraph D.1.e.1 should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>“7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b is removed and Section D.1.e.1 is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data however was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ul style="list-style-type: none"> • Of the 67 stations being monitored as part of the CSMP SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. • 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. • The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9 % and 3.2% for SMB-5-2 and 6-1 respectively. • The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1 respectively. Although SMB 5-2 exceedance rate is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. • Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% 	<p>plan(s).</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>compared to 6.9% and 3.2% for SMB-5-2 and 6-1).</p> <p>See Exhibit A for analysis of Regional Board Staff Report data.</p> <p>In addition the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p>	
A	Attachment E	Multiple	<p>The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus predictions do not necessary use County rain gages.</p>	
A	III.A.4.d.iii-iv	31	<p>For municipalities to “provide for diversion of non-storm water discharge to the sanitary sewer” is not appropriate and implies that the MS4 permittee should bear the cost and responsibility for complying with this requirement. The appropriate responsible party is the discharger.</p> <p>Similarly for municipalities to “provide for treatment” of a non-storm water discharge is inappropriate use of public funds unless it is a discharge generated by the activity of the MS4 Permittee. Instead the discharger must be required to obtain a permit and connect the discharge to the sanitary sewer, or to treat the discharge, but that would fall under</p>	<p>Strike provision III.A.4.d.iii. Strike provision III.A.4.d.iv.</p> <p>Split III.A.4.d into three possible actions:</p> <ul style="list-style-type: none"> i. Prohibit the non-stormwater discharge or ii. Require that the discharger obtain coverage under an NPDES permit iii. Impose conditions in addition to those in

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>“impose additional conditions”</p> <p>More appropriately, the actions of the permittee with regards to dischargers can be captured by “imposing conditions in addition to those in Table 8, subject to approval by the Regional Board..”</p>	Table 8...
A	V.	37-38	Receiving Water Limitations provisions in this draft tentative Permit must be amended. As written, a Permittee can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires Permittees to implement an iterative process to improve BMPS to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.	The receiving water limitation language needs to clarify when a permittee is in compliance. Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on the CalTrans permit which has been provided in the comment letter from the LA Permit Group.
A	VI.D.6.c.iii(4)(f)	73	The requirement that offsite projects must be completed within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite project is an impossible expectation for offsite projects of any significant scale. Municipalities cannot implement retrofit-type offsite projects without a significant portion of the construction funds in hand or committed, so this requirement will effectively limit the scale and effectiveness of offsite projects to those that are very small and can be funded within a narrow window of time to allow for design and construction of the retrofit project within the 4-year window.	Recommend that this requirement be changed to “within 4 years of the certificate of occupancy for the <i>last</i> project that contributed funds toward the construction of the offsite project”.
A	VI.D.6.d.i.	80	Please clarify that the provision that a Permittee	Recommend that VI.D.6.d.i.(1) be

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>may submit documentation that an alternate local Low Impact Development ordinance is equivalent to the Permit requirements can be employed for low impact development ordinances that were not pre-existing to this permit. Some Permittees that have not yet developed a local LID ordinance pending adoption of this Permit may find that it is in the best interests of water quality and the broader interests of the community to develop a local LID ordinance to achieve the same objectives in a manner that is more in keeping with local land use, geography and geology and pollutants of concern/TMDL objectives. If such a local LID ordinance is developed subsequent to the adoption of this permit, then the Permittee should be able to submit the documentation of equivalence to the Executive Officer for review and comment during development of the ordinance so that a finding of equivalence could be made concurrent with the LID ordinance adoption.</p>	<p>modified to read: "Documentation shall be submitted within 180 days after the effective date of this Order. For local LID ordinances developed subsequent to the effective date of the permit a documentation of local equivalence shall be provided to the Regional Board Executive officer for approval prior to final adoption of the local LID ordinance.</p>
A	VI.D.7.g.	84-85	<p>The requirement for Permittees to create an electronic tracking system for construction sites one acre and greater is redundant with the State Water Resources Control Board SMARTS tracking system under the General Construction permit. It is a waste of public funds to create a redundant database requirement, especially for largely built-out communities where very few construction projects are large enough to trigger this requirement. Since the Permittees are already required by Part VI.D.7. h.(8) to ensure that coverage is obtained under the General Construction Permit so all such projects would be required to upload their information to the SMARTS</p>	<p>Provide the option for permittees to meet this requirement by regularly accessing and using the Statewide SMARTS system to monitor the status of construction sites within their jurisdictions. This makes particular sense for permittees that will require a submittal of a SWPPP consistent with the Construction General Permit in lieu of a local Erosion and Sediment Control Plan.</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			system and that information is also readily accessible to Regional Board staff as well.	
A	VI.D.9.b.v.	108	For municipalities to “provide for diversion of the entire flow to the sanitary sewer or provide treatment” with respect to an ongoing illicit discharge is not the appropriate language and implies that the MS4 permittee should bear the cost and responsibility for complying with this requirement which responsibility is properly borne by the discharger	Substitute “require the discharger to obtain an NPDES permit or connect the non-storm water discharge to the sanitary sewer system”
A	VI.E.2.c.iii.	113	The statement that “if a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO) issued by the Regional Board, it is not the Regional Water Board’s intention to take enforcement action for violations of Part V.A. Receiving Water Limitations” does not prevent citizens (third parties) from bringing action against the Permittee pursuant to 33 USC 1365, and may actually increase the ability of third parties to bring action by the explicit statement that the Regional Board does not intend to take enforcement.	Recommend that TMDL requirements should be addressed through Watershed Management Plan revisions and approvals by the Regional Board Executive Officer rather than through a time schedule order.
A	VI.E.2.d.(4)(b)	113	The statement that for approved Watershed Management Program used to establish compliance with Interim Water Quality-Based Effluent Limitations and Receiving Water Limitations, structural BMPs must be designed to treat the 85 th percentile, 24-hour storm should be modified to allow for systems of BMPs. Retrofit BMPs which may not individually achieve treatment of the 85 th percentile, 24-hour storm but may be able to when combined with other BMPs or low impact development provisions into a <i>system of BMPs</i> .	Modify VI.E.2.d.(4)(b) to read: “Structural storm water BMPs <i>or systems of BMPs</i> must be designed and maintained to treat stormwater runoff from the 85 th percentile, 24-hour storm . . . “
A	VI.E.4.b.	116	Rather than request a Time Schedule Order for	Add the additional language to

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			State Adopted TMDLs where final compliance deadlines have passed as listed in the adopted TMDL, Permittees should have the option of revising the Watershed Management Plan to include the elements listed in VI.E.4.d..	the end of VI.E.b.: “or include the information listed in VI.E.4.d.i-vi in its Watershed Management Plan.”
A	VI.E.5.b.(c)	118	Why was Santa Monica Bay left out of this list of waterbodies for which Permittees may comply with the effluent limitations through progressive installation of full capture systems? The Marine Debris TMDL allows for compliance via the installation of for full capture devices.	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. However if Board staff determines to leave the lists, then please add Santa Monica Bay to the list.
A	Attachment A	A-8	In the definition of “Rainfall Harvest and Use”, why is only rainfall runoff from a roof included in the category of rainfall harvest and use, it would seem that runoff from other types of impervious surfaces could also be beneficially used for irrigation.	Revise the definition of “Rainfall Harvest and Use” to avoid describing the source of the runoff, but simply use the term “rainfall runoff” and leave to the discretion of the Permittees to determine what sources of runoff can be beneficially used for irrigation and non-potable uses.
A	Attachment G		More time needed to provide detailed comments specific to Jurisdictional Groups 5&6	
A	Attachment H		More time needed to provide detailed comments specific to Jurisdictional Groups 5&6	
A	Attachment I		More time needed to provide detailed comments specific to Jurisdictional Groups 5&6	
A	Attachment J		More time needed to provide detailed comments specific to Jurisdictional Groups 5&6	
A	Attachment M A.	M-1 through m-7	This discussion in this section devoted to the Santa Monica Bay Beaches Bacteria TMDL creates confusion regarding the meaning of the terms "water quality objectives or standards, and	Make suggested specific revisions in the following comments.

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			"receiving water limitations" and "water quality-based effluent limitations"—it has effectively reversed the meaning of the terms and has set effluent limitations that are more strict than the receiving water limitations.	
A	Attachment M A.2.	M-1	The language in Part M.A.2. is incorrect as is the title of the table. As defined in Attachment A, page A-8, Receiving Water Limitations are the applicable numeric or narrative water quality objective criterion or limitation for the receiving water . . . Thus water quality objectives or water quality standards are those that apply in the receiving water. Consistent with the TMDL, this table identifies the bacteriological objectives as set forth in Chapter 3 of the Basin Plan and serves as the numeric targets for the Santa Monica Bay Beaches Bacteria TMDL.	Language at A.2. should be revised to read: <i>Receiving Water Limitations are the bacteriological objectives set forth in Chapter 3 of the Basin.</i> The main header in this table should be: <i>Basin Plan Water Quality Objectives (MPN or cfu)</i>
A	Attachment M A.3.	M-1	Part M.A.3 mistakenly uses the term “receiving water limitations” to refer to “waste load allocations”. In the Santa Monica Bay Bacteria TMDL the term “allowable exceedance days” is synonymous with “waste load allocations”. The Santa Monica Bay Beaches Bacteria TMDL Basin Plan Amendment Attachment A states that “Waste Load Allocations are expressed as allowable exceedance days”.	Throughout A.3. the term “receiving water limitations” should be replaced by the term “waste load allocations”
A	Attachment M	M-5	Footnote 7 states that final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location. We have previously provided to Regional Board staff information on which members of our jurisdictional groups have responsibility for which monitoring locations.	An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.
A	Attachment M	M-8	The Santa Monica Bay DDT and PCB TMDL issued	Include the concentration-based

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
	C.2.		by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data from mass emissions stations to which none of the South Santa Monica Bay cities are tributary. Because the TMDL has been translated into the Permit using only the mass-based waste load allocation to the entire area of Los Angeles County, the individual cities will be obligated to wait until the entire LA Basin is in compliance to establish attainment of the TMDL waste load allocations.	sediment targets from Table ES-1 of the TMDL as concentration-based Waste Load Allocations in the MS4 Permit normalized for organic carbon (OC): DDT: 23 ng/g OC PCBs: 7 ng/g OC
B	II Finding A	13	Primary pollutants of concern should be those identified on the 303d list for receiving waters in the LA Basin that have been identified as being impaired, not a twelve-year-old receiving water impact report.	Strike the reference to LACFCD Integrated Receiving Water Impacts Report from 1994-2000 and substitute reference to 303d list
B	III.A.1.a. and III.A.2		<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>We do not understand the meaning or intent of the “through” language or how it could be practically or effectively enforced. Once a prohibited discharge enters the MS4 it mixes with other permitted or conditionally authorized flows making it impossible to address the prohibited discharge separately.</p> <p>The required legal authority provisions in the federal regulations at 40CFR122.26 (d)(1)(ii) require legal authority to control discharges to the MS4 but not through the MS4. Additionally, with respect to the</p>	Substitute the word “to” or “into” for the word “through” in both Part III.A.1.a. and Part III.A.2.

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”.</p> <p>USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p style="text-align: center;"><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p>	
B	III.A.2.b.vi also Table 8	28	To include street washing as a conditionally allowed non-storm water discharge in this order is backsliding from the previous permit and conflicts with the Industrial/Commercial Source Control BMPs in Table 10 which only allows sidewalk rinsing in accordance with LARWQCB Resolution No. 98-08. Patio washing should be allowed in order to maintain sanitary conditions in outdoor eating areas as long as high pressure, low volume spray washing is used.	Substitute “patio” for “street” so that sidewalk and patio rinsing are conditionally allowed but not street washing. Also include patio washing in the Table 10 discussion of sidewalk washing for industrial/commercial source control BMPs.
B	III. Table 8	33	Please clarify what is meant by “segregate”	Give examples of measures that could be taken to segregate non-

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
				storm water discharges from potential sources of pollutants
B	VI.A.vii and viii	39	Please clarify what is meant by “control contribution of pollutants from one portion of the shared MS4 to another through interagency agreements	Give an example of how an interagency agreement would be used to control contribution of pollutants
B	VI.A.3.a.	40	<p>The Permit states that “<i>Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this order</i>”.</p> <p>This is an impossible permit demand. The scope of this tentative draft Permit is unprecedented in its demands on the fiscal resources of municipalities and it is impossible for municipalities to secure the fiscal resources to meet all the requirements of this order. Municipalities have a myriad of other obligations which also place demands on fiscal resources in an environment of diminishing budgets. Municipalities must necessarily balance limited fiscal resources among competing demands and we will be obligated to prioritize those demands.</p>	Delete provision VI.A.3.a. as it establishes an impossible requirement, such a requirement is not in the existing permit, and no basis or authority for making this requirement has been provided by Regional Board staff.
B	VI.A.14.h	44-45	Trash TMDLs typically provide that the zero trash objective is functionally achieved so long as certified full capture devices treat <i>up to</i> the 1-year, 1-hour storm. Yet the enforcement provisions for trash TMDLs indicate that violations are limited to the days of a storm event of <i>greater than</i> 0.25 inches.	Please clarify how this provision with respect to enforcement will apply in instances where a permittee has complied with a final trash TDML via installation of certified full capture devices which are not designed to control a storm event of greater than the 1-year, 1-hour storm.
B	VI.C.1.e.	45-46	This provision states that:	Recommend that language be revised to allow for the option of

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

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			<p><i>Watershed Management Programs shall be developed using the Regional Water Board's Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.</i></p> <p>There are many permittees who have jurisdictional area within multiple watersheds with multiple TMDLs to be addressed. It is not clear from this language whether these provisions allow the option for the creation of a single Watershed Management Program by a group of permittees to address multiple watersheds within those jurisdictional boundaries. At the workshop held on July 9, 2012, Regional Board staff indicated that Watershed Management Programs could be developed by a group of permittees such as those who have previously been working in jurisdictional groups towards TMDL compliance. It may be most effective in terms of municipal resources for a group of permittees with similar land use and geography but which affect multiple watersheds to prepare a joint Watershed Management Program Plan within their defined jurisdictional boundaries.</p>	<p>development of a Watershed Management Program by one or more permittees which would address multiple watersheds and associated TMDLs at once within those jurisdiction(s)' boundaries.</p>
B	VI.C.6.a.i.,	54	<p>States that "Permittees in each WMA shall implement an adaptive management process <i>annually</i> during the permit term, beginning in 2015, . . ." This conflicts with Appendix F Fact Sheet, page F-44 which states that "Permittees in each Watershed Management Area must implement the iterative process at least twice during the permit term, adapting the Watershed Management Program to become more effective," also</p>	<p>There should be only one revision of the Watershed Management Programs required during the Permit term, and only when the adaptive management/iterative process demonstrates that the modification is warranted.</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			<p>Table F-5 in the Fact sheet, page F-47 references parts VI.C.6.a.i and indicates that the frequency twice during the permit</p> <p>An annual adaptive management process is too frequent for stormwater as the data supporting that adaptive process is not sufficiently robust over one storm season to make management decisions. It is also time consuming to make changes as a group by committee and is not a practical to revise the Watershed Management Program Plan on an annual basis.</p>	
B	VI.C.6.b.i.	55	<p>This provision appears to require the individual permittees within a WMA to implement the adaptive management process on an annual basis, i.e., more frequently than the WMA as a whole. The adaptive management/iterative approach and timing should be consistent between individual permittees who are participating in a watershed management program and the watershed management program.</p>	<p>Eliminate the separate jurisdictional requirements of Part IV.6.b. entirely as it is redundant with Part IV.6.a.</p>
B	VI.D.1.b.i.	56	<p>30 days is not a sufficient period of time to implement the minimum control measures. There are many provisions which necessitate lead time, planning and action by the governing body in order to implement. In addition it is difficult for Permittees to find all the required deadlines when they are sprinkled throughout the permit.</p>	<p>Recommend that this language be revised to state Permittee shall initiate measures within 30 days of the effective date of the permit to ensure that provisions of Part VI.D. are implemented in accordance with the Timeline for Implementation of Permit Requirements and then suggest including Table F-5 in the body of the permit at this location, i.e., at VID.1.b.i.</p>
B	VI.D.4.d.(3)(d)	60	<p>Please clarify why pharmacies should be targeted</p>	<p>Delete the requirement to</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			as a means for stormwater pollution prevention public outreach. If this is related to the “no drugs down the drain” message, this does not relate to stormwater pollution prevention but rather is related to POTW discharges	outreach to pharmacies unless there is a clear connection to stormwater quality, in which case please explain what the outreach message is intended to be.
B	VI.D.6.b.i.(c)	68	Under <i>New Development Projects</i> “strip malls” needs to be defined or use an alternate term. Why is a strip mall being regulated but not other types of malls or commercial facilities? If the intention is to distinguish between retail and office uses, then this should be explicitly stated.	Provide a definition of “strip mall” so that Permittees can effectively implement this requirement.
B	VI.D.7.f	84	The exclusion of routine maintenance activities from the definition of “construction” under the current MS4 permit does not appear to have been preserved in Part VI.D.7. Nor is there a definition of “construction” in Appendix A.	Include in the discussion of what activities constitute construction the following statement from the previous permit: “Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to stormwater, mechanical permit work; or sign permit work.”
B	VI.D.7.f	84	Need to exclude landscaping and gardening activities from the definition of construction. Because there is no size limit for construction sites in the draft permit and based on the description of construction activity in Part VI.D.7.f, a homeowner	Recommend excluding activities that do not require a building or grading permit under local ordinance from the requirements of Part VI.D.7. Any potential

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			who is gardening or conducting landscape activities that do not require a building permit would be subject to the provisions of VI.D.7.	problems with landscaping activities that result in potential for discharge of soil to the MS4 can be readily enforced through the illicit discharge program rather than the construction program.
B	VI.D.8.f.ii.(2)	99	The wording of Part VI.D.7.f.ii.(2) appears to require that existing municipal facilities with vehicle or equipment wash areas must now either be self-contained and hauled off for disposal or plumbed to the sanitary sewer. The previous permit allowed existing facilities not plumbed to the sanitary sewer to be equipped with a clarifier or alternative treatment device and then discharged to the storm drain	If there is now to be an effective requirement to prohibit this as a non-stormwater discharge without condition/pre-treatment and require existing facilities to retrofit, then municipalities must be given at least two years from the effective date of the permit to make this retrofit—30 days from the effective date of the permit is not a sufficient period of time. Also for small municipalities where the frequency of washing and amount of washwater can be reasonably managed by percolation into the ground, recommend providing a third option for preventing the discharge of wash waters from vehicle and equipment washing: (3) discharge the wash water onto a permeable surface where the wash water will percolate into the ground and that is bermed or sloped to prevent discharge to the MS4, e.g., gravel surface or porous paving.
B	VI.D.8.h.ii.	100	Water removed by dewatering from solid material	Add a third disposal option to

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			removed from the MS4 (including street sweeping material) could be disposed by percolation rather than requiring that the water be disposed via sanitary sewer—this would be analogous to the provision in VI.D.8.h.x(3)(b) where residual water from BMP treatment control devices can be “applied to the land without runoff”.	VI.D.8.h.ii as follows: (3) Applied to the land without runoff
B	Attachment A	A-5-6	Definition of Maximum Extent Practicable provided here is not a definition but a set of factors/criteria. As noted on page F-30 of the Fact Sheet, “Neither Congress nor the USEPA has specifically defined the term ‘maximum extent practicable’. Rather, the MEP standard is a flexible and evolving standard.”	Remove Maximum Extent Practicable from the definition attachment and rely instead for an understanding of the term on the discussion in the Fact Sheet on pages F-30 to F-31 which references State Board and USEPA interpretation.
B	Attachment K and Attachment N	N-4 through	Attachment K does not adequately clarify responsibility among Permittees for compliance with the VERY complex TMDL. The State Board requested a clarification of this issue from the Regional Board staff in its review of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. Regional Board staff developed and submitted an Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL. This table should be included either in Attachment K or in Attachment No to clarify permittee responsibilities.	Please incorporate into the MS4 Permit the Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL
B	Attachment N E.		The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets	Please include an additional statement from the TMDL in Attachment N Part E:

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			and WLAs.	"By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."
C	Table 2	1-8	Contact information should not be included in permit except in the form of a position/title, e.g., public works director, as it will change over time, some information is already incorrect	Delete detailed contact information and include only position/title to whom information or correspondence should be directed.
C	II Finding I	19	Finding I indicates that the Fact Sheet provides background and rationale for the permit requirements and incorporates the Fact Sheet into the Order as Attachment F, however many elements of the Fact Sheet rather than being explanatory of policy or background describe implementation requirements in the permit and in some cases statements in the fact sheet are inconsistent or contradictory with the main body of the permit.	Eliminate inconsistencies between Attachment F and main body of permit by eliminating duplicative elements from Fact Sheet. This will eliminate the need to update the Fact Sheet as revisions are made to the Permit.
C	III.A.1.d.iv.	27	Important definitions should not be in footnotes, but should be included in Attachment A. Footnote 5 states that uncontaminated groundwater infiltration is distinguished from "inflow", however the term "inflow" is not defined—typically it is used to refer to stormwater which infiltrates the sanitary sewer collection system, and if that is the reference this case it doesn't really seem to be relevant.	Delete footnote 5. Move definition of "groundwater infiltration" from footnote 5 to Definitions in Attachment A . Eliminate reference to "inflow" as it is not relevant in this situation.

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
C	III.A.4.d.i.	31	Effectively prohibit as defined in footnote 18 actually represents two different actions, one of which is to prohibit the discharge, the second of which is to require that the discharger obtain an NPDES permit in which case the discharge becomes authorized. Requiring that the discharge obtain an NPDES permit may be in some instances be the most appropriate action, especially if the discharge falls within the scope of an existing general permit wherein the discharger should have already obtained coverage.	Eliminate footnote 18 as a definition, and instead split III.A.4.d into three possible actions: <ul style="list-style-type: none"> i. <i>Prohibit the non-stormwater discharge or</i> ii. <i>Require that the discharger obtain coverage under an NPDES permit</i> iii. <i>Impose conditions in addition to those in Table 8 . . .</i>
C	VI.A.14.f.	44	The definition of “effluent limitation” here is different than the definition in Attachment A which draws on 40CFR122.2	Define effluent limitation only in Attachment A consistent with federal regulations.
C	VI.C.1.e. and VI.E.3.b.	46 and 114	<p>Part VI.E.3.b. provides that: <i>Each Permittee subject to a USEPA Established TMDL may either individually submit a Watershed Management Program Plan, or may jointly submit a plan with all Permittees subject to the WLAs contained in the USEPA established TMDL.</i></p> <p>So by implication VI.E.3.b. suggests that it is possible for a Permittee to submit an individual Watershed Management Program Plan, even though it is not explicitly stated in VI.C.1.e.</p> <p>However Part VI.E.3.b. seems to suggest that in order to submit a joint Watershed Management Program Plan that all Permittees subject to the USEPA WLAs must participate, which may be</p>	<p>Please make these two provisions consistent with each other on multiple points as follows:</p> <p>Clarify at VI.C.1.e. that a Permittee may submit an individual Watershed Management Program Plan.</p> <p>Clarify at VI.E.3.b. that a Permittee may jointly submit a plan with <i>some or all</i> Permittees subject to the WLAs contained in the USEPA established TMDL.</p>

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

Rank	Permit section reference	Pages	Comment	Recommended change
			impossible to achieve since a Permittee cannot be forced to participate in a joint Watershed Management Program Plan.	
C	VI.D.6.b.i.(g)	68	The website link provided for the Green Infrastructure Green Streets guidance was not sufficient to locate the document. Please confirm that this is the document that is referenced, and if not, clarify which is the intended reference: <i>Managing Wet Weather with Green Infrastructure, Municipal Handbook: Green Streets. Prepared by: Robb Lukes, Christopher Kloss, Low Impact Development Center. December 2008 EPA-833-F-08-009</i>	Please provide a more effective reference for the USEPA guidance document on Green Streets than a website link by referencing exact document title, authors, year of publication and USEPA document ID number.
C	VI.D.7.f	84	If this description of construction is to be utilized for identifying what constitutes construction for all of Part IV.D.7, then it should appear early in this part and not buried in the middle of the section. Where it is currently located it applies only to construction sites one acre or greater and there is no explanation of what constitutes construction for sites less than one acre.	The narrative in VI.D.7.f should be moved to the Applicability section at VI.D.7.c so that the applicability subsection actually discusses what types of activity constitute construction and are subject to the provisions of VI.D.7.
C	VI.D.7.a.iv.	83-92	The hierarchy/outline structure of the Development Construction Program under IV.D.7 is very confusing and difficult to follow. VI.D.7.d. is entitled "Requirements for Construction Sites Less than One Acre", however there is not a subsequent subheading entitled "Requirements for Construction Sites of One Acre or more". There is also a redundant/unnecessary subheading at Part VI.D.7.d.i. entitled "For construction sites less than 1 acre, each Permittee shall:", but there is no subsequent subheading Part VI.D.7.d.ii at all. There is a statement under under VI.D.7.c. that Parts	Make IV.D.7.e. be entitled "Requirements for Construction Sites of One Acre or More" and demote the current subheadings of VI.D.7.e-j below this new IV.D.7.e heading to be VI.D.7.e. i.-vi. Do not assign an outline number/heading number for the statement "For construction sites less than 1 acre, each Permittee shall:" but simply allow that

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

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			VI.D.7.e-j apply exclusively to construction sites 1 acre or greater, so by implication parts VI.D.7.k and l apply to all categories, but that should be clarified via corrections to the outline structure.	statement to be the introductory sentence to IV.7.d. Promote outline items VI.D.7.d.i.(1)-(4) up an outline level so that they become VI.D.7.d.i.-iv.
C	VI.D.8.h.x.(3)	103	The term “residual water” has a footnote number 35 stating that it is to be defined in Attachment A Definitions, however no definition of “residual water” is provided in Attachment A.	Provide a definition of “residual water” in Attachment A.
C	VI.D.8.k.i and ii	106	The language in the draft permit requires Permittees to train contractors on the requirements of the MS4 Permit and on pesticide use. Permittees should have the option of requiring contractors to train their own employees and enforce this via contract provisions similar to the provision under the Illicit Discharge section at VI.D.9.f.ii.	Add a statement at V.D.8.k.i. that: “Each Permittee shall ensure contractors performing privatized/contracted municipal services are trained on the requirements of the stormwater management program. Permittees may provide training or include contractual requirements for MS4 Permit training of contractor employees.” Add a statement at V.D.8.k.ii. that: “Each Permittee shall ensure contractors performing privatized/contracted municipal services who use or have the potential to use pesticides or fertilizers are trained on the requirements of the stormwater management program. Permittees may provide training

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

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				or include contractual requirements for MS4 Permit training of contractor employees.”
C	Table F-5		Timeline for Implementation of Permit Requirements is a helpful synopsis of all the deadlines in the permit. This table should be incorporated into the body of the permit rather than in the Fact Sheet as a vital reference for permittees.	Move Table F-5 into main body of permit as it is a useful reference for implementation of permit requirements. Make sure that timelines in Table F-5 are consistent with statements made in the permit.
C	VI.E.5.b.(c)(i)	118	<p>The language here is not consistent with the language used to establish compliance in the TMDLs.</p> <p>The Santa Monica Bay Marine Debris TMDL language reads:</p> <p>“Compliance with percent reductions from the Baseline WLA will be assumed wherever properly-sized full capture systems are installed and properly operated and maintained in corresponding <i>percentages of the conveyance</i> discharging to waterbodies within the Santa Monica Bay Watershed or directly to Santa Monica Bay.”</p>	Need to revise the language in the tentative draft permit at VI.E.5.b.(c)(i) to clarify that it is <i>the MS4 conveyance system</i> that must be serviced by the full capture systems, not “drainage areas”.
C	VI.E.5.b.ii.(2)	121	Here and throughout full capture systems are designed to address a percentage of the MS4 conveyance system, not a drainage area.	Here and throughout substitute “MS4 conveyance system” not “drainage area” when discussing compliance with a trash TMDL via the full capture system method
C	VI.E.c.i.	122	Date for the first TMDL Compliance Report to be submitted with the Permittee’s Annual Report is incorrect as it is prior to the projected effective date of this draft tentative permit. The Annual Reports that will be submitted by Permittees in October	Correct the date for submitting the first TMDL Compliance Report with the Permittee’s Annual Report to be October 31, 2013, not 2012.

ATTACHMENT A
J5 & 6 Comments on June 6, 2012 Draft Los Angeles County MS4 NPDES Permit

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			2012 will be consistent with the existing MS4 Permit not the draft permit.	
C	Attachment A	A-5	Definition of “infiltration” is not a description of the process of infiltration but rather a description of best management practices that utilize the infiltration process. The term “infiltration” must be distinguished from “infiltration BMP”.	<i>Infiltration</i> definition should be revised to be entitled <i>Infiltration BMP</i> .
C	Attachment B figures		It is problematic that the Watershed Boundaries do not align with the HUC 12 Boundaries in many areas.	Appears that the HUC 12 boundaries need to be revised, or else reference to the HUC 12 boundaries should be eliminated in favor of watershed boundaries.
C	Attachment F		More time needed to provide detailed comments	
C	Attachment M B.3	M-6 to M-7	The WLAs in the adopted Santa Monica Bay Nearshore and Offshore Debris TMDL were expressed in terms of percent reduction of trash from Baseline WLA. Board staff have not transferred the Waste Load Allocations as expressed in the TMDL into the MS4 Permit, but have instead calculated annual trash discharge rates for each permittee based on a calculation using an assumed tributary area. There are very likely to be errors in the tributary areas used in calculating these Waste Load Allocations and correcting them will necessitate reopening the Permit. It makes far more sense for MS4 Permittees to verify and if necessary correct the tributary areas for their individual jurisdictions as part of the development of the Trash Monitoring and Reporting Plans and to simply include in the permit the schedule for percentage reduction from baseline applicable to all permittees.	Eliminate the detailed permittee-by-permittee table with annual trash discharge rates in the table and instead create a simple table listing the interim and final waste load allocations on a percentage basis, only.

Exhibit A
SMBBB TMDL Reconsideration Regional Board Staff Report May 2012
Data Evaluation by City of Redondo Beach

Summer-Dry Weather Ranking

Rank		Sum-Dry		Exceed rate	Win-Dry		Exceed rate	Wet		Exceed rate	Total		Exceed rate	Samples per week
		Exceed	Samples		Exceed	Samples		Exceed	Samples		Exceed	Samples		
1	SMB-2-1	124	248	50.0%	87	135	64.4%	40	62	64.5%	251	445	56.4%	1
2	SMB-1-12	139	278	50.0%	58	133	43.6%	36	62	58.1%	233	473	49.3%	1
3	SMB-3-3	352	860	40.9%	215	481	44.7%	145	253	57.3%	712	1594	44.7%	5
4	SMB-1-8	88	237	37.1%	50	126	39.7%	31	64	48.4%	169	427	39.6%	1
5	SMB-2-2	45	140	32.1%	48	105	45.7%	29	49	59.2%	122	294	41.5%	1
6	SMB-MC-2	246	857	28.7%	222	481	46.2%	171	250	68.4%	639	1588	40.2%	5
7	SMB-1-18	203	859	23.6%	134	480	27.9%	152	252	60.3%	489	1591	30.7%	5
8	SMB-BC-1	180	857	21.0%	80	481	16.6%	155	251	61.8%	415	1589	26.1%	5
9	SMB-1-7	44	217	20.3%	46	118	39.0%	32	57	56.1%	122	392	31.1%	1
10	SMB-1-10	41	208	19.7%	6	95	6.3%	18	54	33.3%	65	357	18.2%	1
11	SMB-MC-3	29	156	18.6%	20	104	19.2%	27	52	51.9%	76	312	24.4%	1
12	SMB-2-7	147	860	17.1%	316	481	65.7%	202	252	80.2%	665	1593	41.7%	5
13	SMB-1-9	30	195	15.4%	20	105	19.0%	22	52	42.3%	72	352	20.5%	1
14	SMB-3-1	25	192	13.0%	12	98	12.2%	19	51	37.3%	56	341	16.4%	1
15	SMB-2-4	30	236	12.7%	30	172	17.4%	44	91	48.4%	104	499	20.8%	1
16	SMB-1-13	23	187	12.3%	10	98	10.2%	23	52	44.2%	56	337	16.6%	1
17	SMB-6-2*	35	303	11.6%	30	169	17.8%	35	108	32.4%	100	580	17.2%	1
18	SMB-MC-1	21	187	11.2%	14	102	13.7%	12	48	25.0%	47	337	13.9%	1
19	SMB-1-15	21	190	11.1%	26	107	24.3%	16	53	30.2%	63	350	18.0%	1
20	SMB-5-5	29	273	10.6%	5	110	4.5%	15	67	22.4%	49	450	10.9%	2
21	SMB-3-2	20	191	10.5%	19	103	18.4%	25	53	47.2%	64	347	18.4%	1
22	SMB-1-1	19	187	10.2%	10	95	10.5%	11	49	22.4%	40	331	12.1%	1
23	SMB-2-5	18	185	9.7%	13	99	13.1%	21	53	39.6%	52	337	15.4%	1
24	SMB-2-9	16	185	8.6%	4	91	4.4%	20	51	39.2%	40	327	12.2%	1
25	SMB-3-4	73	856	8.5%	105	481	21.8%	163	253	64.4%	341	1590	21.4%	5

Exhibit A
SMBBB TMDL Reconsideration Regional Board Staff Report May 2012
Data Evaluation by City of Redondo Beach

26	SMB-1-14	15	181	8.3%	6	91	6.6%	21	55	38.2%	42	327	12.8%	1
27	SMB-1-11	15	183	8.2%	8	94	8.5%	18	49	36.7%	41	326	12.6%	1
28	SMB-1-17	7	94	7.4%	5	60	8.3%	4	26	15.4%	16	180	8.9%	1
29	SMB-2-6	13	185	7.0%	40	116	34.5%	26	56	46.4%	79	357	22.1%	1
30	SMB-2-13	16	230	7.0%	8	167	4.8%	31	90	34.4%	55	487	11.3%	1
31	SMB-5-2	56	811	6.9%	57	402	14.2%	96	216	44.4%	209	1429	14.6%	5
32	SMB-3-8	15	236	6.4%	17	163	10.4%	27	89	30.3%	59	488	12.1%	1
33	SMB-6-5	15	261	5.7%	7	139	5.0%	10	74	13.5%	32	474	6.8%	2
34	SMB-6-3	10	178	5.6%	6	97	6.2%	11	51	21.6%	27	326	8.3%	1
35	SMB-6-4	9	181	5.0%	13	94	13.8%	12	51	23.5%	34	326	10.4%	1
36	SMB-7-7	7	152	4.6%	3	93	3.2%	16	48	33.3%	26	293	8.9%	1
37	SMB-3-6	8	175	4.6%	7	96	7.3%	25	57	43.9%	40	328	12.2%	1
38	SMB-2-3	8	178	4.5%	1	90	1.1%	17	51	33.3%	26	319	8.2%	1
39	SMB-1-5	8	179	4.5%	17	99	17.2%	13	50	26.0%	38	328	11.6%	1
40	SMB-2-8	7	178	3.9%	3	91	3.3%	18	50	36.0%	28	319	8.8%	1
41	SMB-1-6	6	173	3.5%	12	98	12.2%	14	52	26.9%	32	323	9.9%	1
42	SMB-2-15	6	175	3.4%	5	91	5.5%	13	50	26.0%	24	316	7.6%	1
43	SMB-3-7	6	178	3.4%	10	95	10.5%	22	52	42.3%	38	325	11.7%	1
44	SMB-6-1	26	807	3.2%	35	384	9.1%	99	213	46.5%	160	1404	11.4%	5
45	SMB-3-9	5	176	2.8%	8	95	8.4%	19	50	38.0%	32	321	10.0%	1
46	SMB-1-4	5	177	2.8%	22	102	21.6%	13	50	26.0%	40	329	12.2%	1
47	SMB-2-12	4	173	2.3%	5	92	5.4%	14	50	28.0%	23	315	7.3%	1
48	SMB-2-10	5	230	2.2%	6	166	3.6%	34	91	37.4%	45	487	9.2%	1
49	SMB-6-6	4	196	2.0%	5	110	4.5%	7	64	10.9%	16	370	4.3%	2
50	SMB-5-3	5	256	2.0%	4	138	2.9%	6	75	8.0%	15	469	3.2%	2
51	SMB-1-16	3	173	1.7%	3	91	3.3%	10	55	18.2%	16	319	5.0%	1
52	SMB-4-1	3	173	1.7%	4	93	4.3%	6	48	12.5%	13	314	4.1%	1
53	SMB-2-14	3	175	1.7%	3	91	3.3%	11	49	22.4%	17	315	5.4%	1
54	SMB-5-1	4	234	1.7%	2	124	1.6%	7	65	10.8%	13	423	3.1%	2
55	SMB-3-5	10	856	1.2%	105	481	21.8%	93	253	36.8%	208	1590	13.1%	5
56	SMB-7-9	4	378	1.1%	3	277	1.1%	11	160	6.9%	18	815	2.2%	2
57	SMB-7-4	1	134	0.7%	1	273	0.4%	7	160	4.4%	9	567	1.6%	1

Exhibit A
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Data Evaluation by City of Redondo Beach

58	SMB-2-11	1	170	0.6%	0	90	0.0%	14	53	26.4%	15	313	4.8%	1
59	SMB-5-4	1	187	0.5%	1	87	1.1%	10	48	20.8%	12	322	3.7%	1
60	SMB-7-5	1	375	0.3%	4	275	1.5%	7	160	4.4%	12	810	1.5%	2
61	SMB-7-1	0	175	0.0%	0	96	0.0%	8	55	14.5%	8	326	2.5%	1
62	SMB-7-8	0	374	0.0%	4	275	1.5%	13	159	8.2%	17	808	2.1%	2
63	SMB-7-3	0	374	0.0%	0	273	0.0%	14	160	8.8%	14	807	1.7%	2
64	SMB-7-6	0	374	0.0%	0	273	0.0%	14	160	8.8%	14	807	1.7%	2
65	SMB-1-2	0	169	0.0%	1	92	1.1%	3	52	5.8%	4	313	1.3%	1
66	SMB-1-3	0	169	0.0%	1	91	1.1%	2	52	3.8%	3	312	1.0%	1
67	SMB-7-2	0	176	0.0%	1	97	1.0%	2	52	3.8%	3	325	0.9%	1

Sampling Freq.

Weekly	52 wks x 6 years	312
Two days per week	52 wks x 2 x 6 years	624
Five days per week	52 wks x 5 x 6 years	1560

* SMB-6-2 data is comprised of two different monitoring stations located at two different places. One station is identified as S16 monitored per CI6948 and the other is identified as SMB-6-2 per the CSMP. S16 is located just south of the Redondo Beach Pier and SMB-6-2 is located approximately 100 yards south of the Pier in front of a life guard station.

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Average Exceedance Percentage Year Round Ranking

Rank	Station	Sum-Dry		Exceed rate	Win-Dry		Exceed rate	Wet		Exceed rate	Total		Exceed rate	Samples per week
		Exceed	Samples		Exceed	Samples		Exceed	Samples		Exceed	Samples		
1	SMB-2-1	124	248	50.0%	87	135	64.4%	40	62	64.5%	251	445	56.4%	1
2	SMB-1-12	139	278	50.0%	58	133	43.6%	36	62	58.1%	233	473	49.3%	1
3	SMB-3-3	352	860	40.9%	215	481	44.7%	145	253	57.3%	712	1594	44.7%	5
4	SMB-2-7	147	860	17.1%	316	481	65.7%	202	252	80.2%	665	1593	41.7%	5
5	SMB-2-2	45	140	32.1%	48	105	45.7%	29	49	59.2%	122	294	41.5%	1
6	SMB-MC-2	246	857	28.7%	222	481	46.2%	171	250	68.4%	639	1588	40.2%	5
7	SMB-1-8	88	237	37.1%	50	126	39.7%	31	64	48.4%	169	427	39.6%	1
8	SMB-1-7	44	217	20.3%	46	118	39.0%	32	57	56.1%	122	392	31.1%	1
9	SMB-1-18	203	859	23.6%	134	480	27.9%	152	252	60.3%	489	1591	30.7%	5
10	SMB-BC-1	180	857	21.0%	80	481	16.6%	155	251	61.8%	415	1589	26.1%	5
11	SMB-MC-3	29	156	18.6%	20	104	19.2%	27	52	51.9%	76	312	24.4%	1
12	SMB-2-6	13	185	7.0%	40	116	34.5%	26	56	46.4%	79	357	22.1%	1
13	SMB-3-4	73	856	8.5%	105	481	21.8%	163	253	64.4%	341	1590	21.4%	5
14	SMB-2-4	30	236	12.7%	30	172	17.4%	44	91	48.4%	104	499	20.8%	1
15	SMB-1-9	30	195	15.4%	20	105	19.0%	22	52	42.3%	72	352	20.5%	1
16	SMB-3-2	20	191	10.5%	19	103	18.4%	25	53	47.2%	64	347	18.4%	1
17	SMB-1-10	41	208	19.7%	6	95	6.3%	18	54	33.3%	65	357	18.2%	1
18	SMB-1-15	21	190	11.1%	26	107	24.3%	16	53	30.2%	63	350	18.0%	1
19	SMB-6-2*	35	303	11.6%	30	169	17.8%	35	108	32.4%	100	580	17.2%	1
20	SMB-1-13	23	187	12.3%	10	98	10.2%	23	52	44.2%	56	337	16.6%	1
21	SMB-3-1	25	192	13.0%	12	98	12.2%	19	51	37.3%	56	341	16.4%	1
22	SMB-2-5	18	185	9.7%	13	99	13.1%	21	53	39.6%	52	337	15.4%	1
23	SMB-5-2	56	811	6.9%	57	402	14.2%	96	216	44.4%	209	1429	14.6%	5
24	SMB-MC-1	21	187	11.2%	14	102	13.7%	12	48	25.0%	47	337	13.9%	1
25	SMB-3-5	10	856	1.2%	105	481	21.8%	93	253	36.8%	208	1590	13.1%	5
26	SMB-1-14	15	181	8.3%	6	91	6.6%	21	55	38.2%	42	327	12.8%	1

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27	SMB-1-11	15	183	8.2%	8	94	8.5%	18	49	36.7%	41	326	12.6%	1
28	SMB-2-9	16	185	8.6%	4	91	4.4%	20	51	39.2%	40	327	12.2%	1
29	SMB-3-6	8	175	4.6%	7	96	7.3%	25	57	43.9%	40	328	12.2%	1
30	SMB-1-4	5	177	2.8%	22	102	21.6%	13	50	26.0%	40	329	12.2%	1
31	SMB-3-8	15	236	6.4%	17	163	10.4%	27	89	30.3%	59	488	12.1%	1
32	SMB-1-1	19	187	10.2%	10	95	10.5%	11	49	22.4%	40	331	12.1%	1
33	SMB-3-7	6	178	3.4%	10	95	10.5%	22	52	42.3%	38	325	11.7%	1
34	SMB-1-5	8	179	4.5%	17	99	17.2%	13	50	26.0%	38	328	11.6%	1
35	SMB-6-1	26	807	3.2%	35	384	9.1%	99	213	46.5%	160	1404	11.4%	5
36	SMB-2-13	16	230	7.0%	8	167	4.8%	31	90	34.4%	55	487	11.3%	1
37	SMB-5-5	29	273	10.6%	5	110	4.5%	15	67	22.4%	49	450	10.9%	2
38	SMB-6-4	9	181	5.0%	13	94	13.8%	12	51	23.5%	34	326	10.4%	1
39	SMB-3-9	5	176	2.8%	8	95	8.4%	19	50	38.0%	32	321	10.0%	1
40	SMB-1-6	6	173	3.5%	12	98	12.2%	14	52	26.9%	32	323	9.9%	1
41	SMB-2-10	5	230	2.2%	6	166	3.6%	34	91	37.4%	45	487	9.2%	1
42	SMB-1-17	7	94	7.4%	5	60	8.3%	4	26	15.4%	16	180	8.9%	1
43	SMB-7-7	7	152	4.6%	3	93	3.2%	16	48	33.3%	26	293	8.9%	1
44	SMB-2-8	7	178	3.9%	3	91	3.3%	18	50	36.0%	28	319	8.8%	1
45	SMB-6-3	10	178	5.6%	6	97	6.2%	11	51	21.6%	27	326	8.3%	1
46	SMB-2-3	8	178	4.5%	1	90	1.1%	17	51	33.3%	26	319	8.2%	1
47	SMB-2-15	6	175	3.4%	5	91	5.5%	13	50	26.0%	24	316	7.6%	1
48	SMB-2-12	4	173	2.3%	5	92	5.4%	14	50	28.0%	23	315	7.3%	1
49	SMB-6-5	15	261	5.7%	7	139	5.0%	10	74	13.5%	32	474	6.8%	2
50	SMB-2-14	3	175	1.7%	3	91	3.3%	11	49	22.4%	17	315	5.4%	1
51	SMB-1-16	3	173	1.7%	3	91	3.3%	10	55	18.2%	16	319	5.0%	1
52	SMB-2-11	1	170	0.6%	0	90	0.0%	14	53	26.4%	15	313	4.8%	1
53	SMB-6-6	4	196	2.0%	5	110	4.5%	7	64	10.9%	16	370	4.3%	2
54	SMB-4-1	3	173	1.7%	4	93	4.3%	6	48	12.5%	13	314	4.1%	1
55	SMB-5-4	1	187	0.5%	1	87	1.1%	10	48	20.8%	12	322	3.7%	1
56	SMB-5-3	5	256	2.0%	4	138	2.9%	6	75	8.0%	15	469	3.2%	2
57	SMB-5-1	4	234	1.7%	2	124	1.6%	7	65	10.8%	13	423	3.1%	2
58	SMB-7-1	0	175	0.0%	0	96	0.0%	8	55	14.5%	8	326	2.5%	1

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59	SMB-7-9	4	378	1.1%	3	277	1.1%	11	160	6.9%	18	815	2.2%	2
60	SMB-7-8	0	374	0.0%	4	275	1.5%	13	159	8.2%	17	808	2.1%	2
61	SMB-7-3	0	374	0.0%	0	273	0.0%	14	160	8.8%	14	807	1.7%	2
62	SMB-7-6	0	374	0.0%	0	273	0.0%	14	160	8.8%	14	807	1.7%	2
63	SMB-7-4	1	134	0.7%	1	273	0.4%	7	160	4.4%	9	567	1.6%	1
64	SMB-7-5	1	375	0.3%	4	275	1.5%	7	160	4.4%	12	810	1.5%	2
65	SMB-1-2	0	169	0.0%	1	92	1.1%	3	52	5.8%	4	313	1.3%	1
66	SMB-1-3	0	169	0.0%	1	91	1.1%	2	52	3.8%	3	312	1.0%	1
67	SMB-7-2	0	176	0.0%	1	97	1.0%	2	52	3.8%	3	325	0.9%	1

* SMB-6-2 data is comprised of two different monitoring stations located at two different places. One station is identified as S16 monitored per CI6948 and the other is identified as SMB-6-2 per the CSMP. S16 is located just south of the Redondo Beach Pier and SMB-6-2 is located approximately 100 yards south of the Pier in front of a life guard station.



CITY OF SOUTH EL MONTE

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July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

Mr. Ivar Ridgeway
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013
LAMS42012@waterboards.ca.gov
rpurdy@waterboards.ca.gov
iridgeway@waterboards.ca.gov

Dear Mr. Ridgeway:

The City of South El Monte ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001) ("Permit"). This legal comment letter is a supplement to the technical comments submitted on behalf of the City of South El Monte on Thursday July 19, 2012.

The LA Permit Group has also submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of South El Monte, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving permittees to guess at which

requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice (“BMP”) based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. *See* Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit’s current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit, as outlined in EPA’s November 12, 2010 Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (“EPA Memorandum”). *See also* 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the “disaggregation” of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article XI, section 7 of the California Constitution also guarantees municipalities the right to “make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.” *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless “Legislature has removed the constitutional police power of the City to regulate” in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a “super municipality” responsible for setting zoning policy and requirements throughout Los Angeles County. The prescriptive and one-size-fits-all nature of this policy will ensure that any resident or business challenging the conditions set forth in this Permit would not only sue the municipality charged with implementing these requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the “Maximum Extent Practicable” (“MEP”) standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates

subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. (*See, e.g.*, Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the

requirements of prior permits, despite the fact no funding will be provided. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

“(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

The Permit goes far beyond a requirement that a permittee “monitor” the effluent from its own storm drains. The Permit’s Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees’ jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request “other information”, such requests can only be “reasonably” imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitee’s discharge. Rather, the Permit requires copermitees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

6. The Permit Exceeds the Regional Board’s Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board’s failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include “[e]conomic considerations” with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. *See* Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. *See* Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

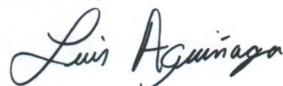
Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to “commingled discharges” of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee’s discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee’s actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees’ dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

Sincerely,



Louie Aguinaga
Mayor
City of South El Monte

cc: Louie Aguinaga, Mayor, City of South El Monte
Hector Delgado, Councilmember, City of South El Monte
Angelica R. Garcia, Councilmember, City of South El Monte
Willhans Ili, Councilmember, City of South El Monte
Joseph J. Gonzales, Councilmember, City of South El Monte
Jennifer E. Vasquez, Assistant City Manager, City of South El Monte
Quinn M. Barrow, esq.



City of South Gate

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GEORGE TROXCIL
CITY MANAGER

July 23, 2012

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iridgeway@waterboards.ca.gov

LAMS42012@waterboards.ca.gov

Los Angeles Regional Water Control Board

320 W. 4th Street, Suite 200

Los Angeles, CA 90013

***Subject: Comment letter – Tentative NPDES Permit (Draft Order) for
MS4 Dischargers within the Los Angeles County Flood Control District***

The City is an active member of the Los Angeles Permit Group (LAPG), which has been reviewing the commenting on the Tentative MS4 Stormwater Permit. By way of this letter, South Gate supports and hereby incorporates the LAPG comments by reference.

Thank you.

Sincerely,

Bryan Cook for

George Troxcil
City Manager

cc: Mayor and City Council
Mohammad Mostahkami, Director of Public Works/City Engineer



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Los Angeles Regional Water Control Board

320 W. 4th Street, Suite 200

Los Angeles, CA 90013

**Subject: Comment letter – Tentative NPDES Permit (Draft Order) for
MS4 Dischargers within the Los Angeles County Flood Control District**

The City of Temple City is a residential community located in the upper San Gabriel Valley with many single family homes. As such, the city has always taken great pride in maintaining a clean and aesthetically pleasing environment. The city would first like to complement the Regional Board on the number of workshops and the open lines of communication the Board has maintained during the development of the next MS4 (NPDES) Storm Water Runoff Permit. Even with this effort, the next Tentative Permit is over 500 pages in length and much more complex than the previous Permit which was adopted in 2001.

We understand that on July 13, 2012, the Regional Board has denied a request by the Los Angeles Permit Group for a 180 day extension to provide additional time to review and amend the Tentative Permit where clarification is needed. It is requested that the Regional Board reconsider its decision denying the request of an extension.

In addition to their request for an extension, the Los Angeles Permit Group is also submitting specific technical comments and those comments are hereby incorporated by reference. Important concerns include:

1. The opening section (Facility Information, Table 2) that lists the names of the contact person, thus incorporating the names into the MS4 permit is inappropriate as city personnel are very likely to change over the next 5 or more years. Only the city names and addresses should be listed.
2. Section D.1.b.i (page 56) indicates that all the Minimum Control Measures must be implemented within 30 days of the effective date of the permit. This is not realistic given that

the permittees are being given 6 months in which to decide whether to implement the MCMs or follow the Watershed Management Program as described separately within the Tentative Permit.

3. The Receiving Water Limitations (RWL) language is a critical issue for the city. Under the current wording, any exceedance whether: (1) under an existing TMDL, (2) listed on the 303d impaired waterbody list but where no TMDL is yet developed, or (3) not listed as an impairment but listed as a water quality standard would subject permittees to RWL requirements. For example, runoff would now be immediately subject to limitations on such “pollutants” as aluminum, sulfates, chloride, etc. If these pollutants were priorities, TMDLs or monitoring would already be in place; and to the city’s knowledge, no outfall monitoring has yet occurred. Cities must be given a reasonable opportunity to determine the current level of these “pollutants”, and then develop economically and technically feasible control measures, preferably through an iterative adaptive approach. We understand that several statewide efforts are underway and the Regional Board is urged to review the proposed wording of these efforts and remedy the current deficiencies in the Receiving Waters Limitations wording.
4. Under the construction provisions for sites over 1 acre. Since the SWPPP program (GCP) is in place and applications can now be electronically filed by contractors and since this is a State Program, and since the State collects permit and inspection fees, cities should not be responsible for ensuring the SWPPP application process and the increased number of inspections unless the State provides a portion of the fees as reimbursement to cities for the additional costs.
5. Under Section D.7.h.ii.(8), the verification that contractors have obtained various State permits (401, 404, 1600, etc.) should not be the responsibility of the city. As owner/operator of the flood control channels where the actual connections will be made, verification of these permits should be the responsibility the Army Corps of Engineers or the County Flood Control District.
6. Item (4) on page 70: This item should be eliminated. It forces an evaluation of green roofs for every project, whether or not a green roof is proposed.
7. Section VI.D.7.f (page 84): land clearing for fire protection should not be considered a construction activity.
8. The whole of the new outfall monitoring program represents an extremely expensive endeavor. This needs to be completely revised in order to make it economically viable. As part of several Los Angeles River TMDL groups, Temple City is facing a shared cost of hundreds of thousands of dollars in monitoring costs. The costs for this additional outfall monitoring which will include testing for post-construction treatment system evaluation and additional programs for pyrethroid studies, will be economically unachievable. Attachment E should be listed as “items that could be included in a monitoring plan” and this program will then be developed over the next several years.
9. Section III.A.1 (page 26). “- - prohibit non-storm water discharges through the MS4 - -” , should be changed to: “- - prohibit non-storm water discharges into the MS4 - -“. Leaving the wording as is would require permittees to discern non-exempt discharges within coming flows for upstream sources outside the jurisdiction of the permittee.

10. The entire section ix (page 103) dealing with sanitary sewers should be omitted. Sanitary sewer system operations and maintenance are already addressed by an existing WDR.

Thank you in advance for consideration of these comments. Please call John Hunter at (562) 802-7880 if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Masura', with a long horizontal flourish extending to the right.

Steve Masura
Director of Community Development
City of Temple City



LeRoy J. Jackson
City Manager

CITY OF TORRANCE

OFFICE OF THE CITY MANAGER

July 20, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comment Letter – Draft Los Angeles County MS4 NPDES Permit

Dear Madam Chair and Members of the Los Angeles Regional Water Quality Control Board:

The forty-five day review period to provide written comment on this 500-page permit was completely inadequate and did not provide sufficient time for staff to review and consider the implications of the new requirements and to provide substantive comments, and most importantly it did not give sufficient time to inform City Council of the implications prior to submittal of these comments. Given the time allotted, we have prepared some specific comments to the draft tentative MS4 Permit, and they are included as Attachment A to this letter. In addition, we want to express our support and concurrence with the comments being provided by the LA Permit Group and Santa Monica Bay Beach Bacteria Total Maximum Daily Load Jurisdictional Groups 5 & 6 directly.

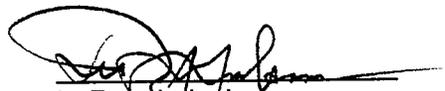
There are a number of significant issues in this permit that will place cities in immediate non-compliance or which are impossible to achieve even with unlimited funding. They are as follows:

- Receiving Waters Limitation language that does not provide Permittees any opportunity to improve water quality and come into compliance once those limits are exceeded in new monitoring.
- Final Waste Load Allocations for TMDLs that were established with no knowledge of how they could be achieved.
- Submittal and implementation schedules for Minimum Control Measures, Watershed Management Programs and Coordinated Integrated Monitoring Programs that have been shown to be impossible to meet.

We believe the Regional Board should make every effort to avoid immediate legal challenges to this Order that could delay the implementation of this Order. We urge the Los Angeles Regional Water Quality Control Board to issue a second draft Tentative Order with an

additional review period to allow Permittees a total of 180 days to review the full implications of the draft MS4 NPDES Permit and work with Regional Board staff to develop a permit that will result in water quality improvement in the most cost effective and expeditious manner.

Sincerely,



LeRoy J. Jackson
City Manager

Attachment: Detailed comments

City of Torrance Comments on Draft NPDES Permit for MS4 Discharges within LA County noticed on June 6, 2012.

Comment No.	Permit section reference	Pages	Comment	Recommended change
1	Table 2	1-8	Contact information should not be included in permit except in the form of a position/title, e.g., public works director, as it will change over time, some information is already incorrect	Delete detailed contact information and include only position/title to whom information or correspondence should be directed.
2	II Finding A	13	Primary pollutants of concern should be those identified on the 303d list for receiving waters in the LA Basin have been identified as being impaired, not a twelve-year-old receiving water impact report.	Strike the reference to LACFCD Integrated Receiving Water Impacts Report from 1994-2000 and substitute reference to 303d list
3	II Finding I	19	Finding I indicates that the Fact Sheet provides background and rationale for the permit requirements and incorporates the Fact Sheet into the Order as Attachment F, however many elements of the Fact Sheet rather than being explanatory of policy or background describe implementation requirements in the permit and in some cases statements in the fact sheet are inconsistent or contradictory with the main body of the permit.	Eliminate inconsistencies between Attachment F and main body of permit by eliminating duplicative elements from Fact Sheet. This will eliminate the need to update the Fact Sheet as revisions are made to the Permit.
4	II Finding N	24	The Order authorizes and directs the use of Low Impact Development BMP to maximize groundwater infiltration. This is in direct conflict with the Endangered Species Act because it diverts freshwater flows away from Ecologically Sensitive Areas.	Clarify that L.I.D. Ordinances and Developer required L.I.D. exemptions include preserving flows to established freshwater ecosystems that have been identified by a Naturalist would be degraded by having dry and wet weather run off diverted.
5	II Finding Q	24	The statement that this Order does not constitute state mandates that are subject to a subvention of funds is not supported in Attachment F.	Provide a section by section comparison of permit conditions compared to Federal Regulations support this Finding.
6	II Finding R	25	The statement that "Regional Water Board finds that the requirements in this permit are not more stringent than the minimum federal requirements." is not substantiated because there is no condition in the	Revise Effluent Limitations to be Technology Based Effluent Limitations as approved in Watershed Management Program.

Comment No.	Permit section reference	Pages	Comment	Recommended change
7	III.A.1.a. and III.A.2	26	<p>Order limiting controls to reduce pollutants to the maximum extent practicable. Federal regulations require limit control to the maximum extent practicable. This omission clearly enables the conditions of this Order to far exceed Federal requirements and to have no monetary limit.</p> <p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>We do not understand the meaning or intent of the “through” language or how it could be practically or effectively enforced. Once a prohibited discharge enters the MS4 it mixes with other permitted or conditionally authorized flows making it impossible to address the prohibited discharge separately.</p> <p>The required legal authority provisions in the federal regulations at 40CFR122.26 (c)(1)(ii) require legal authority to control discharges to the MS4 but not through the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p>Furthermore, USEPA provides model ordinance</p>	Substitute the word “to” or “into” for the word “through” in both Part III.A.1.a. and Part III.A.2.

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Comment No.	Permit section reference	Pages	Comment	Recommended change
8	III.A.2.	27	<p>language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>It is impossible for Permittees to meet all the required conditions to classify non-storm water discharges as “Conditionally exempt”. The conditions in Table 8 are far too numerous and onerous for a Permittee to enforce. It is specifically impossible to demonstrate that non-stormwater discharges resulted in an exceedence based on source specific water quality monitoring. The only way to enforce the requirements for conditionally exempt flows is to require the discharger to obtain a Discharge Permit from the Regional Board with those requirements.</p>	<p>With the exception of Landscape irrigation, the City proposes to prohibit non-stormwater discharges and require those dischargers to obtain a Discharge Permit from the Regional Board so no changes to the language are requested.</p> <p>The Regional Board staff may want to consider making flow the only nexus needed to document a connection between a RWL or WLA exceedence and conditionally exempt non-storm water discharges.</p>
9	III.A.1.d.iv.	27	<p>Important definitions should not be in footnotes, but should be included in Attachment A. Footnote 5 states that uncontaminated groundwater infiltration is distinguished from “inflow”, however the term “inflow” is not defined—typically it is used to refer to</p>	<p>Delete footnote 5. Move definition of “groundwater infiltration” from footnote 5 to Definitions in Attachment A. Eliminate reference to “inflow” as it is not relevant in this situation.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
10	III.A.2.b.vi also Table 8	28	stormwater which infiltrates the sanitary sewer collection system, and if that is the reference this case it doesn't really seem to be relevant. To include street washing as a conditionally allowed non-storm water discharge in this order is backsliding from the previous permit and conflicts with the Industrial/Commercial Source Control BMPs in Table 10 which only allows sidewalk rinsing in accordance with LARWQCB Resolution No. 98-08. Patio washing should be allowed in order to maintain sanitary conditions in outdoor eating areas as long as high pressure, low volume spray washing is used.	Substitute "patio" for "street" so that sidewalk and patio rinsing are conditionally allowed but not street washing. Also include patio washing in the Table 10 discussion of sidewalk washing for industrial/commercial source control BMPs.
11	III.A.4.d.i.	31	Effectively prohibit as defined in footnote 18 actually represents two different actions, one of which is to prohibit the discharge, the second of which is to require that the discharger obtain an NPDES permit in which case the discharge becomes authorized. Requiring that the discharge obtain an NPDES permit may be in some instances be the most appropriate action, especially if the discharge falls within the scope of an existing general permit wherein the discharger should have already obtained coverage.	Eliminate footnote 18 as a definition, and instead split III.A.4.d.i. into two possible actions: i. <i>Prohibit the non-stormwater discharge or</i> ii. <i>Require that the discharger obtain coverage under an NPDES permit</i> iii. <i>Impose conditions in addition to those in Table 8 . . .</i>
12	III.A.4.d.iii.	31	For municipalities to "provide for diversion of non-storm water discharge to the sanitary sewer" is not the appropriate language and implies that the MS4 permittee should bear the cost and responsibility for complying with this requirement which is the responsibility of the discharger	Substitute "require the discharger to obtain a permit and connect the non-storm water discharge to the sanitary sewer system"
13	III.A.4.d.iv	31	For municipalities to "provide for treatment" of a non-storm water discharge is inappropriate use of public funds unless it is a discharge generated by the activity	Strike this provision as it is already covered under "impose conditions in addition to those in Table 8" at ii.

Comment No.	Permit section reference	Pages	Comment	Recommended change
14	III. Table 8	33	<p>of the MS4 Permittee. Instead the discharger must be required to obtain a permit and connect the discharge to the sanitary sewer, or to treat the discharge, but that would fall under "impose additional conditions"</p> <p>Please clarify what is meant by "segregate"</p>	<p>Give examples of measures that could be taken to segregate non-storm water discharges from potential sources of pollutants</p>
15	IV.A.2.	37	<p>There is no condition for Permittees to meet WQBELs to the maximum extent practicable (MEP). This omission inherently exceeds Federal regulations which require Permittees to reduce pollutants to the MEP. This omission also voids all Socioeconomic Considerations included in Attachment F because the Order provides no limit on what municipalities need to spend to meet compliance.</p>	<p>Revise "a." to read, "Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable BMP implementation schedules included in approved Watershed Management Program(s).</p>
16	V.	37-37	<p>Receiving Water Limitations provisions in this draft tentative Permit puts Permittees in immediate non-compliance of this Order and provide Permittees no reasonable opportunity to improve water quality to meet the RWL. As written, a Permittee can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires Permittees to implement an iterative process to improve BMPs to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.</p>	<p>Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on the CalTrans permit which has been provided in the comment letter from the LA Permit Group.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
17	VI.A.2.a.ix.	39	The Order requires the Permittee to have legal authority to "enter, monitor, inspect...entities discharging into the MS4". Every property discharges into the MS4. Does this requirement mean the Permittee must have legal authority to enter every private property?	Revise "entities discharging into the MS4" to read "entities with authorized discharges or under compliance enforcement for illicit discharges into the MS4"
18	VI.A.2.a.vii and viii	39	Please clarify what is meant by "control contribution of pollutants from one portion of the shared MS4 to another through interagency agreements"	Give an example of how an interagency agreement would be used to control contribution of pollutants
19	VI.A.2.b.	40	The requirement to submit statement certified by chief legal counsel annually makes no difference to an agency's legal authority and has no impact on water quality and there are far too many certifications and submittals in this order that could easily result in non-compliance. Please limit submittals only to those that are needed and result in water quality improvement.	Revise the statement to "Each Permittee shall submit this certification as part of the first Annual Report under this Order."
20	VI.A.3.a.	40	The Permit states that "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this order". This is an impossible permit demand that will result in more third party lawsuits and municipal bankruptcies. We do not believe the Regional Board has the authority to impose this condition because it violates State Constitution Article XVI, Section 18.	Delete provision VI.A.3.a. or cite the source of that authority.
21	VI.A.5.b.	41	It is not practicable for all documents submitted to the Regional Board for approval to be first submitted to the public for a 30 day period. This would add a minimum of 30 days to all submittal schedules. There are far too many certifications and submittals in this order that could easily result in non-compliance.	Revise statement to read, "The Regional Board shall make all documents submitted to the Regional Board for approval available to the public for a 30 day period to allow for public comment."

Comment No.	Permit section reference	Pages	Comment	Recommended change
22	VI.A.8.	42	What does this comment mean? Where are the discharge points described in this order?	Omit this section.
23	VI.A.11.	43	Permittees may not have the knowledge or means to prevent the discharge of any waste resulting from the combustion of toxic or hazardous wastes resulting from a building fire or through aerial deposition. Hazardous Waste incinerators should be required to obtain an Industrial Discharge Permit.	Omit this section.
24	VI.A.12. & 13.	43	These comments refer to Corporation Yards that are required to have an Industrial Discharge Permit.	Move to VI.D.8.
25	VI.A.14.f.	44	The definition of "effluent limitation" here is different than the definition in Attachment A which draws on 40CFR122.2	Define effluent limitation only in Attachment A consistent with federal regulations.
26	VI.A.14.h	44-45	Trash TMDLs typically provide that the zero trash objective is functionally achieved so long as certified full capture devices treat up to the 1-year, 1-hour storm. Yet the enforcement provisions for trash TMDLs indicates that violations are limited to the days of a storm event of <i>greater than</i> 0.25 inches.	Please clarify how this provision with respect to enforcement will apply in instances where a permittee has complied with a final trash TDML via installation of certified full capture devices which are not designed to control a storm event of greater than the 1-year, 1-hour storm.
27	VI.A.14.h.	44	This section states, "With respect to the final effluent limitation of zero trash, any detectable discharge of trash necessarily is a serious violation..." This implies that regardless of installation of full capture systems, any detectable trash is a violation of the final effluent limitation. This is an impossible limitation to obtain without causing flooding.	Clearly state in VI.A.14.h. that "except where a Permittee has complies with the installation of full capture systems..."
28	VI.C.1.	45	The Watershed Management Program was proposed for Permittees to apply an Integrated approach to compliance with water quality effluent limitations. This underlying purpose of the program is not highlighted. The State encourages Integrated	Includes a statement such as, "The Watershed Management Program provides flexibility to allow Permittees to develop an integrated watershed management program to address all of the water quality

Comment No.	Permit section reference	Pages	Comment	Recommended change
29	VI.C.2.a.	46	<p>program for compliance of water quality regulations.</p> <p>Please note that Permittees are already required to continue existing MCMs until a Watershed Management Program has been approved. The timeline for submitting draft plan in 1 year is not possible. It is possible to submit a draft plan of a Watershed's proposed MCMs in 1 year. It will take a minimum of 2 years to prepare a watershed model and identify structural BMPs to address High Priority sub-watersheds. That is 2 years after approval of interagency agreement which takes 1 year. It is important that agencies have these approved interagency agreements before proceeding so as to not allow a city to drop out of process after notification. Also, Permittees can not proceed with implementation of final Watershed Management Program until after the approval of the Executive Officer. The Executive Officer and public need time to comment on Watershed Management Program and Permittees need assurance that scope of work will not change before issuing required contracts to implement the program.</p>	<p>effluent requirements of this order in a cost efficient and effective manner. The Watershed Management Program provides the flexibility to allow Permittees to coordinate efforts on a watershed or subwatershed basis to leverage resources in an effort to increase cost efficiency and effectiveness and to closely align Watershed Management Programs with Integrated Monitoring approach.</p> <p>Revise Table 9. Part VI.C.2.b. Provision to "Provide Regional Board an M.O.U. to develop Watershed Management Program" – and Due Date to "12 months after the effective date.</p> <p>Revise Table 9. Part VI.C.2.b. Provision to "Submit draft plan with proposed MCMs to Regional Water Board Executive Officer"</p> <p>Add row to Table 9. Part VI.C.2.b. to read "Begin implementation of regional MCM program identified in the Watershed Management Program" and Due Date to read "Upon submittal of draft Watershed Management Program"</p> <p>Add row to Table 9. Part VI.C.2.c. Provision to read "Submit final draft plan with proposed structural BMP to provide Reasonable Assurance that WQBEL will be obtained." And Due Date as "36 months after effective date."</p> <p>Revise Table 9.VI.C.4. Due Date to "Upon approval of Executive Officer of final plan.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
30	VI.C.2.b.	47	See Comment 29	Revise b. to read, "Permittees that elect to develop a Watershed Management Program must provide the Regional Board an approved interagency agreement no later than 12 months after the effective date.
31	VI.C.2.c.	47	See Comment 29	Revise c. to read, "Permittees that elect to develop a Watershed Management Program shall submit a draft plan identifying the regional MCMs proposed to the Regional Board Executive Officer no later than 24 months after the effective date and implementation of selected MCMs shall begin with that submittal. Permittees shall then submit a final draft Watershed Management Program to the Regional Board Executive Officer that identifies the proposed structural BMPs for High Priority Areas with Reasonable Assurance analysis no later than 36 months after effective date.
32	VI.C.3.a.	47	This section seems to be focused only on TMDLs; however an integrated plan needs to also address water quality RWL and MAL pollutants of concern.	Revise sentence as follows "...water quality based effluent limitations and/or receiving water limitations established pursuant to TMDLs, RWLs and MALS, as set forth..."
33	VI.C.3.b.i.	47	This whole section 3. seems to focus on water bodies and then on whole watersheds. To implement the most effective BMPs the Permittees much identify the High Priority sub-watersheds that contribute the greatest pollutant loads.	Revise VI.C.3.b.i. to read, "Permittees shall identify strategies, control measures and BMPs to implement through their individual storm water management program or watershed management program, that can be implemented by watershed, sub-watershed or by

Comment No.	Permit section reference	Pages	Comment	Recommended change
34	VI.C.3.b.iv.(3)	51	<p>In many cases the Watershed Management Program will identify BMPs that address multiple pollutants and multiple TMDLs, therefore "control measures" previously identified would need to be substituted by different BMPs with greater effectiveness, i.e. BMPs identified in existing TMDL Implementation Plans may not be appropriate for multiple pollutants.</p> <p>States that "Permittees in each WMA shall implement an adaptive management process <i>annually</i> during the permit term, beginning in 2015, . . ." This conflicts with Appendix F Fact Sheet, page F-44 which states that "Permittees in each Watershed Management Area must implement the iterative process at least twice during the permit term, adapting the Watershed Management Program to become more effective, . . ." also Table F-5 in the Fact sheet, page F-47 references parts VI.C.6.a.i and indicates that the frequency twice during the permit</p> <p>An annual adaptive management process is too frequent because the data supporting that adaptive process is not sufficiently robust over one storm season to make management decisions. It is also time consuming to make changes as a group by committee. There are too many certifications and submittals in this order that could easily result in non-compliance. Please limit submittal conditions only to those that are needed and result in water quality improvement.</p>	<p>jurisdiction, with the goal of creating an integrated efficient program to focus individual and collective resources on watershed priorities."</p> <p>Revise (3) to read "Permittees shall list control measures that have been identified in TMDLs and corresponding implementation plans and identify those control measures to be modified to support the Reasonable Assurance Analysis for each TMDL.</p>
35	VI.C.6.a.i.,	54	<p>States that "Permittees in each WMA shall implement an adaptive management process <i>annually</i> during the permit term, beginning in 2015, . . ." This conflicts with Appendix F Fact Sheet, page F-44 which states that "Permittees in each Watershed Management Area must implement the iterative process at least twice during the permit term, adapting the Watershed Management Program to become more effective, . . ." also Table F-5 in the Fact sheet, page F-47 references parts VI.C.6.a.i and indicates that the frequency twice during the permit</p> <p>An annual adaptive management process is too frequent because the data supporting that adaptive process is not sufficiently robust over one storm season to make management decisions. It is also time consuming to make changes as a group by committee. There are too many certifications and submittals in this order that could easily result in non-compliance. Please limit submittal conditions only to those that are needed and result in water quality improvement.</p>	<p>There should be one revision of the Watershed Management Programs every two years, and only when the adaptive management/iterative process demonstrate that the modification is warranted.</p>

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36	VI.C.6.b.i.	55	This provision appears to require the individual permittees within a WMA to implement the adaptive management process on an annual basis, i.e., more frequently than the WMA as a whole. The adaptive management/iterative approach and timing should be consistent between individual permittees and Permittees who are participating in a watershed management program.	Eliminate the separate jurisdictional requirements of Part IV.6.b. entirely as it is redundant with Part IV.6.a.
37	VI.D.1.b.i.	56	30 days is not a sufficient period of time to implement the minimum control measures. There are many provisions which necessitate lead time to hire staff, planning and resources of the Permittees in order to implement. There are several GIS maps and databases that need to be developed. In addition it is difficult for Permittees to find all the required deadlines when they are sprinkled throughout the permit.	Recommend that this language be revised to state Permittee shall initiate measures within 30 days of the effective date of the permit and have measures implemented within 12 months of the effective date of the permit. This would be consistent with Cities that choose not to participate in a Watershed Management Program, i.e. a City demonstrates that they are a signatory of an interagency agreement or have their MCMs implemented within 12 months of the effective date.
38	VI.D.4.a.i.	58	See Comment 37	See Comment 37
39	VI.D.4.d.(3)(d)	60	Please clarify why pharmacies should be targeted as a means for stormwater pollution prevention public outreach. If this is related to the "no drugs down the drain" message, this does not relate to stormwater pollution prevention but rather is related to POTW discharges	Delete the requirement to outreach to pharmacies unless there is a clear connection to stormwater quality, in which case please explain what the outreach message is intended to be.
40	VI.D.5.f.	65	The term "effective" when describing source control BMPs is too vague.	Recommend you reference the CASQA Stormwater BMP Handbook Industrial and Commercial.

Comment No.	Permit section reference	Pages	Comment	Recommended change
41	VI.D.6.b.i.(1)(c)	68	Why is a strip mall being regulated but not other types of malls or commercial facilities?	Revise (c) as follows, "Commercial malls 10,000 square feet or more surface area."
42	VI.D.6.b.i.(g)	68	The website link provided for the Green Infrastructure Green Streets guidance was not sufficient to locate the document. Please confirm that this is the document that is referenced, and if not, clarify which is the intended reference: <i>Managing Wet Weather with Green Infrastructure, Municipal Handbook: Green Streets. Prepared by: Robb Lukes, Christopher Kloss, Low Impact Development Center. December 2008 EPA-833-F-08-009</i>	Please provide a more effective reference for the USEPA guidance document on Green Streets than a website link by referencing exact document title, authors, year of publication and USEPA document ID number.
43	VI.D.6.b.i.(1)	67	Cities can not change development requirements after a Developer obtains Planning Approval, without the Developer incurring financial hardship that could block the Development. See Comment 43	Revise the projects subject to conditioning and approval to "prior to Planning approval of the project(s)".
44	VI.D.6.b.(1)(d)	69		Revise to read, "Existing Development or Redevelopment projects shall mean projects that have been approved by Planning prior to the adoption date of this Order."
45	VI.D.6.c.ii	70-71	There are freshwater ecosystems like rivers, lakes and wetlands that have become dependent on years of wet and dry weather run off and many support Endangered Species. The Madrona Marsh is an example. Other freshwater lakes have poor water quality when the water levels are low, like Machado Lake. Permittees may also be proposing habitat restoration and passive wetland treatment systems for regional BMPs that need a continuous supply of freshwater (run off) to sustain the wetland treatment system and habitat restoration. The City of Torrance	Add to VI.D.6.ii.(2) a category (g) Locations where diverting wet or dry weather flows would have a negative impact on established or proposed freshwater ecosystems as demonstrated in writing by a Naturalist.

Comment No.	Permit section reference	Pages	Comment	Recommended change
46	VI.D.6.c.iii(4)(f)	73	<p>Stormwater Basin Enhancement Project is an example of a project that will use run off to sustain the wetland treatment system and habitat restoration. To ensure no conflict with the Endangered Species Act, to help Permittees maintain water quality in freshwater bodies and to sustain proposed habitat restoration and wetlands, this Order should make clear that one way to demonstrate Technical Infeasibility for L.I.D. is to have a Naturalist certify that an impacted water body in a watershed would suffer ecological degradation if wet or dry weather flows were diverted for infiltration.</p> <p>The requirement that offsite projects must be completed within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite project is an impossible expectation for offsite projects of any significant scale. Municipalities cannot implement retrofit-type offsite projects without all the construction funds in hand or committed, so this requirement will effectively limit the scale and effectiveness of offsite projects to those that are very small and can be funded within a narrow window of time to allow for design and construction of the retrofit project within the 4-year window.</p>	<p>Recommend that this requirement be changed to be consistent with existing language for use of Developer Impact Fees. The current requirement is for Developer Impact Fees to be spent on relative projects within 5 years. This allows Cities to spend the funds on design and/or construction. Being required to only spend the money within 5 years and being able to spend that money on design has afforded the City of Torrance the funds needed to move forward on large regional BMP projects before all the funding for construction had been obtained.</p>
47	VI.D.6.d.iv.	74	<p>What is the purpose of treating water before it leaves a Development site to be treated at an Offsite mitigation project? That is essentially requiring the developer to treat the same water twice and if the water could be treated on site, then it would be treated on site. The costs of those onsite BMPs would</p>	<p>Omit Section VI.D.6.d.iv.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
			<p>also take away funds from offsite projects that have been proven to be more economical and effective. This section defeats the purpose of offsite mitigation projects because Developers will not pay for both onsite and offsite projects. These requirements will discourage those private/public partnerships that could help Permittees fund regional BMPs. Also, what is the purpose of putting in the Benchmark Table for new development BMPs when it is the effectiveness of the offsite project that counts? Permittees are ultimately responsible for RWL and WLA compliance and there are far too many monitoring and submittals requirements in this order that could easily result in non-compliance. Please limit requirements only to those that are needed and result in water quality improvement. In this case the regional offsite BMP is all that is needed to improve water quality.</p>	
49	VI.D.6.d.i.	80	<p>Please clarify that the provision that a Permittee may submit documentation that an alternate local Low Impact Development ordinance is equivalent to the Permit requirements can be employed for low impact development ordinances that were not pre-existing to this permit. Some Permittees that have not yet developed a local LID ordinance pending adoption of this Permit may decide to develop a local LID ordinance to achieve the same objectives in a manner that is more in keeping with local land use, geography and geology and pollutants of concern/TMDL objectives. If such a local LID ordinance is developed subsequent to the adoption of this permit, then the Permittee should be able to submit the</p>	<p>Recommend that VI.D.6.d.i.(1) be modified to read: "Documentation shall be submitted within 180 days after the effective date of this Order for local LID ordinances in effect at the time of adoption, and for local LID ordinances developed subsequent to the effective date of the permit a documentation of local equivalence shall be provided to the Regional Board Executive officer for approval prior to final adoption of the local LID ordinance.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
50	VI.D.6.ii.	80	<p>documentation of equivalence to the Executive Officer for review and comment during development of the ordinance so that a finding of equivalence could be made prior to the LID ordinance adoption.</p> <p>Cities do not adopt memorandum of understandings or agreements to establish structure of communication and delineated authority between departments. Cities set policies. This whole section ii. Project Coordination is redundant with VI.D.6.a and unnecessary. There are too many requirements in this order that could easily result in non-compliance. Please limit requirements only to those that are needed and result in water quality improvement.</p>	Omit Section VI.D.6.ii.
51	VI.D.7.f	84	<p>If this description of construction is to be utilized for identifying what constitutes construction for all of Part IV.D.7, then it should appear early in this part and not buried in the middle of the section. Where it is currently located it applies only to construction sites one acre or greater and there is no explanation of what constitutes construction for sites less than one acre.</p>	<p>The narrative in VI.D.7.f should be moved to the Applicability section at VI.D.7.c so that the applicability subsection actually discusses what types of activity constitute construction and are subject to the provisions of VI.D.7.</p>
52	VI.D.7.f	84	<p>The exclusion of routine maintenance activities from the definition of "construction" under the current MIS4 permit does not appear to have been preserved in Part VI.D.7. Nor is there a definition of "construction" in Appendix A.</p>	<p>Include in the discussion of what activities constitute construction the following statement from the previous permit: "Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or</p>

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53	VI.D.7.f	84	Need to exclude landscaping and gardening activities from the definition of construction. Because there is no size limit for construction sites in the draft permit and based on the description of construction activity in Part VI.D.7.f, a homeowner who is gardening or conducting landscape activities that do not require a building permit would be subject to the provisions of VI.D.7.	Recommend excluding activities that do not require a building or grading permit under local ordinance from the requirements of Part VI.D.7. Any potential problems with landscaping activities that result in potential for discharge of soil to the MS4 can be readily enforced through the illicit discharge program rather than the construction program.
54	VI.D.7.a.iv.	83-92	The hierarchy/outline structure of the Development Construction Program under IV.D.7 is very confusing and difficult to follow. VI.D.7.d. is entitled "Requirements for Construction Sites Less than One Acre", however there is not a subsequent subheading entitled "Requirements for Construction Sites of One Acre or more". There is also a redundant/unnecessary subheading at Part VI.D.7.d.i. entitled "For construction sites less than 1 acre, each Permittee shall:", but there is no subsequent subheading Part VI.D.7.d.ii at all. There is a statement under VI.D.7.c. that Parts VI.D.7.e-j apply exclusively to construction sites 1 acre or greater, so by implication parts VI.D.7.k and l apply to all categories, but that should be clarified via corrections to the outline structure.	Make IV.D.7.e. be entitled "Requirements for Construction Sites of One Acre or More" and demote the current subheadings of VI.D.7.e-j below this new IV.D.7.e heading to be VI.D.7.e. i.-vi. Do not assign an outline number/heading number for the statement "For construction sites less than 1 acre, each Permittee shall:" but simply allow that statement to be the introductory sentence to IV.7.d. Promote outline items VI.D.7.d.i.(1)-(4) up an outline level so that they become VI.D.7.d.i.-iv.
55	VI.D.7.g.	84-85	The requirement for Permittees to create an electronic tracking system for construction sites one acre and greater is redundant with the State Water Resources Control Board SMARTS tracking system under the General Construction permit. It is a waste	Provide the option for permittees to meet this requirement by regularly accessing and using the Statewide SMARTS system to monitor the status of construction sites within their jurisdictions. This makes

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56	VI.D.8.e.	96	<p>of public funds to create a redundant database requirement, especially for largely built-out communities where very few construction projects are large enough to trigger this requirement. Since the Permittees are already required by Part VI.D.7. h.(8) to ensure that coverage is obtained under the General Construction Permit so all such projects would be required to upload their information to the SMARTS system and that information is also readily accessible to Regional Board staff as well.</p> <p>While it may be possible to estimate the impact on the receiving water body of a BMP project, or conversion of soft bottom channels to hard bottom channels, it is impossible to assess the impacts of flood management projects that only construct storm drain pipes on water quality of receiving water bodies. With the exception of bacteria, pollution comes from surface areas before it enters the MS4 so flood management project (storm drain projects) would not have in impact on water quality.</p> <p>With regards to evaluating existing structural flood control facilities to determine if retrofitting the facility to provide additional pollutant removal is feasible, it is feasible with every facility, for example all catch basins could be retrofitted to install filters. The question of which facilities should be retrofitted to improve water quality will be addressed in the Watershed Management Program or TMDL Implementation Plans. There are too requirements in this order that could easily result in non-compliance. Please limit Permittee requirements only to those that are needed and result in water quality improvement.</p>	<p>particular sense for permittees that will require a submittal of a SWPPP consistent with the Construction General Permit in lieu of a Local Erosion and Sediment Control Plan.</p>
				<p>Omit section VI.D.8.e. ii.</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
57	VI.D.8.e.iii	96-98	I do not understand what Table 18 wants the Permittee to do? What does Fence Repair or traffic Sign Repair have to do with water quality? There are too many requirements in this order that could easily result in non-compliance. Please limit requirements only to those that are needed and result in water quality improvement.	Recommend you reference CASQA BMP Handbook Municipal for list of BMIPs that should be employed by Public Agencies.
58	VI.D.8.h.x.(3)(d)	104	Water from a treatment BMP is not an exempt or conditionally exempt non-stormwater discharge and should require a discharge permit to discharge to the storm drain.	Omit VI.D.8.h.x.(3)(d)
59	VI.D.8.i.	104	Street sweeping routing and scheduling are not done this way. Street sweeping is done by routes that cover areas of the City in the most efficient way. It is neither feasible nor economical to route street sweeping as proposed with a street here or there being swept more often than others. This requirement would lead to increased fuel consumption and pollution if applied. Increased street sweeping will be addressed in Watershed Management Plans to address Trash, Nutrient and Toxics TMDLs.	Recommend you simplify this section and just require that streets be swept at least twice a month.
60	VI.D.8.k.i and ii	106	The language in the draft permit requires Permittees to train contractors on the requirements of the MS4 Permit and on pesticide use. Permittees should have the option of requiring contractors to train their own employees and enforce this via contract provisions similar to the provision under the Illicit Discharge section at VI.D.9.f.ii.	Add a statement at V.D.8.k.i. that: "Each Permittee shall ensure contractors performing privatized/contracted municipal services are trained on the requirements of the stormwater management program. Permittees may provide training or include contractual requirements for MS4 Permit training of contractor employees."

Comment No.	Permit section reference	Pages	Comment	Recommended change
61	VI.D.9.b.v.	108	<p>For municipalities to “provide for diversion of the entire flow to the sanitary sewer or provide treatment” with respect to an ongoing illicit discharge implies that the MS4 permittee should bear the cost and responsibility for complying with illicit discharges which is the responsibility of the discharger. If the discharge is from a natural source then it is an exempt non-stormwater discharge. If there is a continuous flow then the City can find the discharge source. Following the full execution of legal authority means a City can shut down the operation that is causing the illicit discharge. This section does not reflect the reality that a City can shut down an illicit operation or physically disconnect an illicit connection.</p>	<p>Add a statement at V.D.8.k.ii. that: “Each Permittee shall ensure contractors performing privatized/contracted municipal services who use or have the potential to use pesticides or fertilizers are trained on the requirements of the stormwater management program. Permittees may provide training or include contractual requirements for MS4 Permit training of contractor employees.” Omit section VI.D.9.b.v.</p>
62	VI.E.2.c.iii.	113	<p>The statement that if a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO) issued by the Regional Board, it is not the Regional Water Board’s intention to take enforcement action for violations of Part V.A. Receiving Water Limitations does not prevent citizens (third parties) from bringing action against the Permittee pursuant to</p>	<p>Recommend that TMDL requirements be addressed through Watershed Management Plan schedule revisions approved by the Regional Board Executive Officer and then adopted by TMDL Re-opener. Each TMDL should have a re-opener before final WLA come into effect</p>

Comment No.	Permit section reference	Pages	Comment	Recommended change
			33 USC 1365, and may actually increase the ability of third parties to bring action by the explicit statement that the Regional Board does not intend to take enforcement.	to determine if Permittees implemented BMPs per approved BMP Implementation Plans, evaluate the effectiveness of the BMPs implemented, evaluate the results of special studies etc. and overall achievability of WLAs. Final WLA for past due TMDLs should be left out of the permit until a TMDL Re-opener is completed. Please note that this process also works in favor of the Regional Board too. The process will allow the Regional Board to re-set TMDL WLAs if science supports such a change and the TMDL re-opener provides a process to fully vet non-compliance of TMDLs before NOV's are issued.
63	VI.E.2.d.(4)(b)	113	The statement that for approved Watershed Management Program used to establish compliance with Interim Water Quality-Based Effluent Limitations and Receiving Water Limitations, structural BMPs must be designed to treat the 85 th percentile, 24-hour storm should be modified to allow for flexibility of BMPs. Retrofit BMPs may not be able to achieve treatment of the 85 th percentile, 24-hour storm due to site constraints, but may be able to when combined with other BMPs or low impact development provisions into a <i>system of BMPs</i> that achieves compliance of RWL, WLA and MAL at the outfall or receiving water. The 85 th percentile 24 hours storm should be described as the maximum storm a BMP should be designed to treat.	Modify VI.E.2.d.(4)(b) to read: "Structural storm water BMPs or systems of BMPs must be designed and maintained to treat stormwater runoff from the 85 th percentile, 24-hour storm . . ."
64	VI.E.4.b.	116	See Comment 62	See Comment 62

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65	Table F-5		Timeline for Implementation of Permit Requirements is a helpful synopsis of all the deadlines in the permit. This table should be incorporated into the body of the permit rather than in the Fact Sheet as a vital reference for permittees.	Move Table F-5 into main body of permit as it is a useful reference for implementation of permit requirements. Make sure that timeliness in Table F-5 are consistent with statements made in the permit.
66	VI.E.5.b.(c)	118	Why was Santa Monica Bay left out of this list of waterbodies for which Permittees may comply with the effluent limitations through progressive installation of full capture systems? The Marine Debris TMDL allows for compliance via the installation of full capture devices.	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. However if Board staff determines to leave the lists, then please add Santa Monica Bay to the list.
67	VI.E.5.b.(c)(i)	118	The language here is not consistent with the language used to establish compliance in the TMDLs. The Santa Monica Bay Marine Debris TMDL language reads: "Compliance with percent reductions from the Baseline WLA will be assumed wherever properly-sized full capture systems are installed and properly operated and maintained in corresponding percentages of the conveyance discharging to waterbodies within the Santa Monica Bay Watershed or directly to Santa Monica Bay."	Need to revise the language in the tentative draft permit at VI.E.5.b.(c)(i) to clarify that it is <i>the MS4 conveyance system</i> that must be serviced by the full capture systems, <i>not</i> "drainage areas".
68	VI.E.5.b.ii.(2)	121	Here and throughout full capture systems are designed to address a percentage of the MS4 conveyance system, not a drainage area.	Here and throughout substitute "MS4 conveyance system" not "drainage area" when discussing compliance with a trash TMDL via the full capture system method
69	VI.E.c.i.	122	Date for the first TMDL Compliance Report to be submitted with the Permittee's Annual Report is incorrect as it is prior to the projected effective date of	Correct the date for submitting the first TMDL Compliance Report with the Permittee's Annual Report to be October

Comment No.	Permit section reference	Pages	Comment	Recommended change
			this draft tentative permit. The Annual Reports that will be submitted by Permittees in October 2012 will be consistent with the existing MS4 Permit not the draft permit.	31, 2013, not 2012.
70	Attachment A	A-5-6	Definition of Maximum Extent Practicable provided here is not a definition but a set of factors/criteria. As noted on page F-30 of the Fact Sheet, "Neither Congress nor the USEPA has specifically defined the term 'maximum extent practicable'. Rather, the MEP standard is a flexible and evolving standard."	Remove Maximum Extent Practicable from the definition attachment and rely instead for an understanding of the term on the discussion in the Fact Sheet on pages F-30 to F-31 which references State Board and USEPA interpretation.
71	Attachment A	A-5	Definition of "infiltration" is not a description of the process of infiltration but rather a description of best management practices that utilize the infiltration process. The term "infiltration" needs to be distinguished from "infiltration BMP".	<i>Infiltration</i> definition should be revised to be entitled <i>Infiltration BMP</i> .
72	Attachment A	A-8	In the definition of "Rainfall Harvest and Use", runoff from other types of impervious surfaces could also be beneficially used for irrigation. There are existing and proposed regional BMPs that capture runoff in a cistern or basin, treat the water and then reuse the water for park or habitat irrigation.	Revise the definition of "Rainfall Harvest and Use" to avoid describing the source of the runoff, but simply use the term "rainfall runoff" and leave to the discretion of the Permittees to determine what sources of runoff can be beneficially used for irrigation and non-potable uses.
73	Attachment B figures		It is problematic that the Watershed Boundaries do not align with the HUC 12 Boundaries in many areas.	HUC 12 Boundaries should be used as guidance. Provide a definition of HUC 21 boundaries as "watershed boundaries that most closely align with HUC 12 boundaries".
74	Attachment E		Agree with comments submitted by LA Permit Group.	
75	Attachment F		Board provided insufficient time to provide detailed written comments.	
75	Attachment G		Board provided insufficient time to provide detailed written comments.	

Comment No.	Permit section reference	Pages	Comment	Recommended change
76	Attachment H		Board provided insufficient time to provide detailed written comments.	
77	Attachment I		Board provided insufficient time to provide detailed written comments.	
78	Attachment J		Board provided insufficient time to provide detailed written comments.	
79	Attachment M A.	M-1 through m-7	This discussion in this section devoted to the Santa Monica Bay Beaches Bacteria TMDL creates confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations"—it has effectively reversed the meaning of the terms and has set effluent limitations that are more strict than the receiving water limitations.	Make suggested specific revisions in the following comments.
80	Attachment M A.2.	M-1	The language in Part M.A.2. is incorrect as is the title of the table. As defined in Attachment A, page A-8, Receiving Water Limitations are the applicable numeric or narrative water quality objective criterion or limitation for the receiving water . . . Thus water quality objectives or water quality standards are those that apply in the receiving water. Consistent with the TMDL, this table identifies the bacteriological objectives as set forth in Chapter 3 of the Basin Plan and serves as the numeric targets for the Santa Monica Bay Beaches Bacteria TMDL.	Language at A.2. should be revised to read: <i>Receiving Water Limitations are the bacteriological objectives set forth in Chapter 3 of the Basin.</i> The main header in this table should be: <i>Basin Plan Water Quality Objectives (MPN or cfu)</i>
81	Attachment M A.3.	M-1	Part M.A.3 mistakenly uses the term "receiving water limitations" to refer to "waste load allocations". The Santa Monica Bay Beaches Bacteria TMDL Basin Plan Amendment Attachment A states that "Waste Load Allocations are expressed as allowable exceedance days".	Throughout A.3. the term "receiving water limitations" should be replaced by the term "waste load allocations"

Comment No.	Permit section reference	Pages	Comment	Recommended change
82	Attachment M	M-5	Footnote 7 states that final receiving water limitations are group-based and shared among all MS4 Permittees located within the sub-drainage area to each beach monitoring location. We have previously provided to Regional Board staff information on which members of our jurisdictional groups have responsibility for which monitoring locations.	An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.
83	Attachment M B.3	M-6 to M-7	The WLAs in the adopted Santa Monica Bay Nearshore and Offshore Debris TMDL were expressed in terms of percent reduction of trash from Baseline WLA. Board staff have not transferred the Waste Load Allocations as expressed in the TMDL into the MS4 Permit, but have instead calculated annual trash discharge rates for each permittee based on a calculation using an assumed tributary area. There are very likely to be errors in the tributary areas used in calculating these Waste Load Allocations and correcting them will necessitate reopening the Permit. It makes far more sense for MS4 Permittees to verify and if necessary correct the tributary areas for their individual jurisdictions as part of the development of the Trash Monitoring and Reporting Plans and to simply include in the permit the schedule for percentage reduction from baseline applicable to all permittees.	Eliminate the detailed permittee-by-permittee table with annual trash discharge rates in the table and instead create a simple table listing the interim and final waste load allocations on a percentage basis, only.
84	Attachment M C.2.	M-8	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data from mass emissions stations to which none of the Peninsula cities are tributary. Because the TMDL has been translated into the Permit using only the mass-based waste load allocation to the entire	Include the concentration-based sediment targets from Table ES-1 of the TMDL as concentration-based Waste Load Allocations in the MS4 Permit normalized for organic carbon (OC): DDT: 23 ng/g OC PCBs: 7 ng/g OC

Comment No.	Permit section reference	Pages	Comment	Recommended change
85	Attachment K and Attachment N	N-4 through	<p>area of Los Angeles County, the individual cities will be obligated to wait until the entire LA Basin is in compliance to establish attainment of the TMDL waste load allocations.</p> <p>Attachment K does not adequately clarify responsibility among Permittees for compliance with the VERY complex TMDL. The State Board requested a clarification of this issue from the Regional Board staff in its review of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. Regional Board staff developed and submitted an Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the website in the technical documents for this TMDL. This table should be included either in Attachment K or in Attachment N to clarify permittee responsibilities.</p>	<p>Please incorporate into the MS4 Permit the Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL</p>
86	Attachment N E.		<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs.</p>	<p>Please include an additional statement from the TMDL in Attachment N Part E: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>

OFFICE OF THE CITY MANAGER

LeRoy J. Jackson
City Manager

July 20, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comment Letter – Draft Los Angeles County MS4 NPDES Permit

Dear Madam Chair and Members of the Los Angeles Regional Water Quality Control Board:

The forty-five day review period to provide written comment on this 500-page permit was completely inadequate and did not provide sufficient time for staff to review and consider the implications of the new requirements and to provide substantive comments, and most importantly it did not give sufficient time to inform City Council of the implications prior to submittal of these comments. Given the time allotted, we have prepared some specific comments to the draft tentative MS4 Permit, and they are included as Attachment A to this letter. In addition, we want to express our support and concurrence with the comments being provided by the LA Permit Group and Santa Monica Bay Beach Bacteria Total Maximum Daily Load Jurisdictional Groups 5 & 6 directly.

There are a number of significant issues in this permit that will place cities in immediate non-compliance or which are impossible to achieve even with unlimited funding. They are as follows:

- Receiving Waters Limitation language that does not provide Permittees any opportunity to improve water quality and come into compliance once those limits are exceeded in new monitoring.
- Final Waste Load Allocations for TMDLs that were established with no knowledge if and how they could be achieved.
- Submittal and implementation schedules for Minimum Control Measures, Watershed Management Programs and Coordinated Integrated Monitoring Programs that have been shown to be impossible to meet.

We believe the Regional Board should make every effort to avoid immediate legal challenges to this Order that could delay the implementation of this Order. We urge the Los Angeles Regional Water Quality Control Board to issue a second draft Tentative Order with an

additional review period to allow Permittees a total of 180 days to review the full implications of the draft MS4 NPDES Permit and work with Regional Board staff to develop a permit that will result in water quality improvement in the most cost effective and expeditious manner.

Sincerely,

LeRoy J. Jackson
City Manager

Attachment: Detailed comments



4305 Santa Fe Avenue, Vernon, California 90058
Telephone (323) 583-8811

July 23, 2012

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013
Attn: Mrs. Renee A. Purdy, Regional Programs Section Chief
Mr. Ivar Ridgeway, Stormwater Permitting Section Chief

ELECTRONIC MAIL

SUBJECT: Comments to Tentative Municipal Separate Storm Sewer System (MS4) Discharges within the Los Angeles County Flood Control District

Dear Ms. Purdy and Mr. Ridgeway:

The City of Vernon appreciates this opportunity to provide comments on the subject Tentative Municipal Separate Storm Sewer System Discharges within the Los Angeles County Flood Control District (Tentative Permit). With strong support from our City Council and City Administration, both the Health and Environmental Control and Community Services and Water Departments are committed to protecting the environment and appreciate the efforts of the Los Angeles Regional Water Quality Control Board (LARWQCB) and its staff in developing this next iteration of the Los Angeles County Municipal Stormwater Permit.

However, the City of Vernon is disappointed with LARWQCB staff's decision to deny our requests for a time extension. The time extension would have provided a fair opportunity to review the 500+ page Tentative Permit, which would have allowed us to adequately evaluate the logistical, legal, and financial impacts of this permit. As the LARWQCB staff has made it very clear, this permit is not like the current permit and certainly does not resemble any of the other statewide general National Pollutant Discharge Elimination System (NPDES) permits. The requested time extension has even greater importance if you consider the Anti-Backsliding Requirement listed in Section II.M of the Tentative Order. We feel that it is a great injustice that Water Board Staff

have not granted the time extension. This Tentative Permit affects every person in Los Angeles County. The public should have the right and be provided fair opportunity to adequately review and comment on the Tentative Permit.

To fully understand the potential impact of this Tentative Permit, each Permittee and affected public must research beyond the 500+ page document and also review the following related documents:

- The federal Clean Water Act
- Porter Cologne Act
- General Industrial Activity Stormwater Permit
- General Construction Permit
- Cal Trans Permit
- CAL FIRE, Office of the State Fire Marshal's Water-Based Fire Protection Systems Discharge Best Management Practices Manual (September 2011)
- All pending and adopted TMDL related documents
- Key court case decisions
- APWA BMP Manual
- SWAMP
- The Ventura County MS4 Permit
- The current Los Angeles County MS4 Permit

It is the City of Vernon's opinion that a time extension was, and still is, necessary. A time extension would not mean that the Permittees would operate without a permit. As you know the existing permit will stay in effect until a new permit is adopted. As the current NPDES timeline stands, the Tentative Permit is six years overdue. What would a time extension have truly jeopardized? The City of Vernon would like to express, despite the submittal of this comment letter, that our request for a time extension still stands.

The City of Vernon would like to also express our disappointment with the contents of the Tentative Permit. Despite our efforts to work with LARWQCB staff, it is clear our comments and concerns have been ignored. The City of Vernon is not requesting a "safe harbor". We are simply looking for a permit that will recognize our efforts and provides a fair and fiscally sustainable opportunity to achieve compliance with the Clean Water Act. Unlike the current General Industrial, General Construction, and Cal Trans stormwater permits, this Tentative Permit does not provide a fair opportunity to achieve compliance. As this tentative permit is written, all permittees will be in violation of the permit if the receiving water exceeds the numeric effluent limits. There is no real opportunity for individual cities to prove that they did not contribute to the exceedance unless all outfalls, regardless of size, are monitored continuously and simultaneously.

The state of the municipalities with respect to the financial situation is such that numeric effluent limits would thrust the Permittees to further financial peril. With many cities now going through unprecedented cutbacks it is imperative that the LARWQCB be sensitive to the financial consequences and re-draft the Tentative Permit to hold the Permittees accountable to those regulations that are financially feasible.

The Los Angeles Regional Water Quality Control Board's Public Notice No. 12-022 states that the Public Hearing for this item has been set for September 6-7, 2012. As communicated at the July 12, 2012 Regional Board meeting by our colleagues the well-anticipated League of California Cities Annual Conference is scheduled for the same dates. The League's conference was scheduled well in advance of Public Notice No. 12-022 and registrations/reservations have been paid for on behalf of our City Administrator and City Council. Reimbursements are not granted from the League for non-attendance. As such, this scheduling conflict does not afford our elected officials the opportunity to attend the Public Hearing and to provide comments on this enormously intricate and economically challenging permit.

Based on our cursory review, the City of Vernon has the following general concerns and comments for the LARWQCB:

1. The Tentative Permit does not provide a compliance standard that is consistent with other National Pollutant Discharge Elimination System (NPDES) permits located statewide or within Los Angeles County. For example, the General Construction and Industrial Permits are not held to the Maximum Extent Practicable (MEP) standard. Nor do they contain Numeric Effluent Limits. To that extent, the current and proposed Caltrans Permits also do not contain Numeric Effluent Limits. We insist that the LARWQCB revise the Tentative Permit to establish a compliance standard that is consistent with (not more stringent than) other current NPDES permits located statewide and within Los Angeles County. The Tentative Permit should provide Permittees fair and equal opportunity to achieve compliance.
2. The Tentative Permit proposes to establish Total Maximum Daily Loads (TMDL) Waste Load Allocations (WLA) as numeric effluent limits. We insist that WLA be translated to Water Quality Based Effluent Limitations (WQBEL), expressed as best management practices (BMPs), and implementation of the BMPs will place the permittees into compliance with WLA. In other words, we insist that the LARWQCB establish TMDL Waste Load Allocations as Numeric Action Levels only, not Numeric Effluent Limits. Should the LARWQCB resolve not to translate TMDL WLA to WQBEL the Permittees will be faced with an economic burden that will require cutbacks in City staff and services.
3. The Tentative Permit neglects economic feasibility and fiscal responsibility. We request that the LARWQCB acknowledge the realistic challenge that all public agencies must be accountable for the use of limited public funds. The permit requirements should be economically feasible and sustainable.
4. We request that the permit provide equal compliance options and "flexibility". The Tentative Permit clearly provides "flexibility" through the Watershed Management Program; however, the Minimum Control Measures option does not provide any "flexibility".
5. The Tentative Permit fails to establish or define a compliance storm event for wet weather compliance. It is irresponsible for the LARWQCB to compel

Permittees to comply with Numeric Effluent Limits at all costs and without any consideration of a storm event's magnitude.

In addition, we have several more specific concerns and would like to express the following concerns and comments:

Tentative Order

1. Part II.M. describes the Anti-Backsliding Requirements as:

Section 402(o)(2) of the CWA and federal regulations at 40 CFR section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations or other conditions in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations or conditions may be relaxed. All effluent limitations and conditions in this Order are at least as stringent as the effluent limitations and conditions in the previous permit.

Concern- This section does not provide any options that would allow any reconsideration of any requirement of this order. This is a very serious issue considering some existing requirements have problems and not to mention the 45 days provided to review and comment on a 500 + page technical document. For example, the language in this Tentative Permit in regards to Trash WLA does not specify the 5 mm. size threshold as specified in the Trash TMDL. It can be argued that all trash, not withstanding particle size, is prohibited and would be a violation of this permit.

This section is also a concern because of the outfall monitoring compliance determinant. We understand that the LARWQCB staff assumes they are providing compliance options to the permittees in terms of outfall monitoring for Receiving Water Limitation exceedances; however, a permittee cannot prove that they did not cause or contribute to an exceedance if not every outfall, regardless of size, was not monitored at exactly the same time.

Proposed Solution- The LARWQCB staff should fully evaluate each requirement with a reasonable assurance that the requirements are realistically achievable and without errors. Most importantly, the LARWQCB must grant the Permittees a practical timeline to adequately review and comment on the Tentative Permit.

2. Part III.A.1. describes the following:

Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters...

Under the current LA MS4 permit, Part 1 describes the following:

Permittees shall effectively prohibit non-stormwater discharges into the MS4 and watercourses.....

Concern- Section 402(p)(B)(ii) of the federal Clean Water Act dictates that MS4 permits:

shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers,

not through or from it.

The modified discharge prohibition language implies that the permittees are the source of all discharges. Most pollution does not originate from City property or City activities. There must be a distinction as to where the discharges are originating from. Permittees have amended their codes to enforce illicit discharges to City property and the storm drain system. This provision is inconsistent with the discharge prohibition that was required in previous permits. Is the intent of this provision to increase the Permittees risk of permit violation or is the intent to improve water quality? There is more than enough research and literature proving that source control is more effective than treatment control.

In addition, Sections III.A.2., III.3, and III.4.f. also use the words “through the MS4” or “from the MS4”.

Proposed Solution- Revise the provision language to ensure that it is consistent with the federal Clean Water Act prohibiting discharges “to the MS4”.

3. Part III.A.1.b. states as follows:

Temporary non-storm water discharges authorized by USEPA³ pursuant to sections 104(a) or 104(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)...

Concern – At first glance, the CERCLA provision appears innocuous. Except what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. Hence, because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is covered under CERCLA? CERCLA is an unnecessary reference in the MS4 permit and more importantly, has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition “to” the MS4 makes this issue moot. A permittee’s only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

Proposed Solution - Maintain Discharge Prohibitions language consistent with current Permit Order No. 01-182.

4. Part III.A.2.a.i. of the Tentative Permit, indicates the following:

Discharges from essential non-emergency fire fighting activities⁷ provided appropriate BMPs are implemented based on the CAL FIRE, Office of the State Fire Marshal's Water-Based Fire Protection Systems Discharge Best Management Practices Manual (September 2011) for water-based fire protection system discharges, and based on Riverside County's Best Management Practices Plan for Urban Runoff Management (May 1, 2004) or equivalent BMP manual for fire training activities and post-emergency fire fighting activities.

Part 2:1 of the CAL FIRE, Office of the State Fire Marshal's Water-Based Fire Protection Systems Discharge Best Management Practices Manual (September 2011)

Notification and Recordkeeping

- a. A single discharge of less than 1,500 gallons – Discharger does not need to give prior notification.*
- b. A single discharge equal to or greater than 1,500 gallons but less than 10,000 gallons – Discharger does not need to give prior notification for any single discharge, but would need to maintain records of those discharges.*
- c. A single discharge equal to or greater than 10,000 gallons – Discharger does need to give prior notification and maintain records of the discharge.*

In addition, Table 8 specifies the following for all authorized discharge categories:

Whenever there is a discharge of one acre-foot or more into the MS4, the Los Angeles County Flood Control District shall require advance notification by the discharger to the potentially affected MS4 Permittees, including at a minimum the District and the Permittee with jurisdiction over the land area from which the discharge originates.

The Tentative Permit appears to offer relief under Section III.A.5:

If a Permittee demonstrates that the water quality- characteristics of a specific authorized or conditionally exempt essential non-storm water discharge resulted in an exceedance of applicable receiving water limitations and/or water quality based effluent limitations during a specific sampling event, the Permittee shall not be found in violation of applicable receiving water limitations and/or water quality-based effluent limitations for that specific sampling event. Such demonstration must be based on source specific water quality monitoring data

from the authorized or conditionally exempt essential non-storm water discharge and other relevant information regarding the specific non-storm water discharge as identified in Table 8.

Concern- One acre foot equals a total of 325,851 gallons. This section of the Tentative Permit specifically increases a Permittees risk of violation for the discharge of non-emergency fire fighting activities with less than 10,000 gallons and all other authorized discharges with less than 325,851 gallons. Not only is the permit allowing any amount to be discharged through the MS4, Permittees are not required to be notified for any discharges under 325,851 gallons. With no requirement to notify the Permittee, it will be the Permittee that will carry the burden of a permit violation.

Proposed Solution- There does not appear to be a specific volume threshold that would not pose a risk of violation for Permittees. The only solution is for LARWQCB establish TMDL Waste Load Allocations as Numeric Action Levels only, not Numeric Effluent Limits. Imposing Numeric Action Levels only will minimize the potential for Permittees to be in violation of the permit from these under-the-radar discharges but still require Permittees to take action.

5. Part III.A.2.a.ii. – Discharge Prohibitions and Page 29, Part III.A.4.a. – Permittee Requirements respectively, state as follows:

...Additionally, each Permittee shall work with potable water suppliers that may discharge to the Permittee's MS4 to ensure: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants...

Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following for non-storm water discharges to the Permittee's MS4:

Concern – It is assumed that Permittees will have a fully executed Memorandum of Understanding (MOU) with each potable water suppliers in our jurisdiction. It is further assumed that an MOU will provide the Permittees with the authority to require potable water suppliers to comply with such requirements.

Proposed Solution – Permittees do not have any authority over potable water suppliers. On the basis that the LARWQCB staff is authorizing this exemption to the discharger, procedures to minimize the discharge should remain with the LARWQCB.

6. Part III.A.4. specifies that each Permittees shall complete the following tasks:

a. Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following for non-storm water discharges to the Permittee's MS4:

- i. *Notifies the Permittee of the planned discharge in advance, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual;*
- ii. *Obtains any local permits required by the MS4 owner(s) and/or operator(s);*
- iii. *Provides documentation that it has obtained any other necessary permits or water quality certifications for the discharge;*
- iv. *Conducts monitoring of the discharge, if required by the Permittee;*
- v. *Implements BMPs and/or control measures as specified in Table 8 or in the applicable BMP manual(s) as a condition of the approval to discharge into the Permittee's MS4; and*
- vi. *Maintains records of its discharge to the MS4, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual.*

Concern- These discharge notification requirements are not a standard provision that is contained in each NPDES permit within Los Angeles County.

Proposed Solution - These discharge notification requirements must be inserted into each NPDES permit that is located within the effective area of this Tentative Permit, whether general or individual. Also, there are some entities that Permittees have very limited authority over (i.e. railroad companies, school districts and Cal Trans).

7. Page 30, Part III.A.4.b. - Permittee Requirements, states as follows:

Develop and implement procedures that minimize the discharge of landscape irrigation water into the MS4 by promoting conservation programs.

Concern – This is not a water conservation permit. This is an imposition, albeit with good intentions, unnecessary for the improvement of water quality standards.

Proposed Solution – Defer water conservation responsibilities to the appropriate water purveyor(s). It should be noted that the City of Vernon has implemented a water conservation ordinance.

8. Part III.A.5 of the Tentative Order indicates the following:

If a Permittee demonstrates that the water quality characteristics of a specific authorized or conditionally exempt essential non-storm water discharge resulted in an exceedance of applicable receiving water limitations and/or water quality based effluent limitations during a specific sampling event, the Permittee shall not be found in violation of applicable receiving water limitations and/or water quality-based effluent limitations for that specific sampling event. Such demonstration must be based on source specific water quality monitoring data from the authorized or conditionally exempt essential non-storm water discharge and other relevant information regarding the specific non-storm water discharge

as identified in Table 8.

Concern- This section does not provide Permittees relief from violation for illicit discharges from an NPDES permitted facility. The primary responsibility for regulating the many other permits (Industrial, Commercial, individual, Cal Trans, etc.) lies upon the respective Regional Water Quality Control Board. If a Permittee encounters a owner/operator of an NPDES permitted facility/property, the Permittee should not be exposed to possible Permit violation if the permittee can show a good-faith-effort to mitigate the discharge and initiates enforcement action. If a Permittee is in violation of the permit due to a NPDES permitted facility, then the primary regulatory agency responsible for the enforcement of the permit is equally at fault of the violation.

Proposed Solution- Expand this relief from violations to include illicit discharges from all NPDES permitted facilities.

9. Part IV.A.1 erroneously indicates the following:

Technology Based Effluent Limitations- each Permittee shall reduce pollutants in stormwater discharges from the MS4 to the maximum extent practicable (MEP).

Concern- A technology-based effluent limitation (TBEL) is established on the basis of the capabilities of available technologies, as opposed to the MEP, to control and reduce discharges of pollutants. The TBEL is established in accordance with technological standards set forth in the CWA: the best practicable control technology currently available (BPT), applicable to discharges of any constituents defined as pollutants under the Clean Water Act; the best available technology economically achievable (BAT), applicable to discharges of pollutants listed as toxic under the CWA; and best conventional pollutant control technology (BCT), applicable to discharges of pollutants listed as conventional under the CWA. [33 U.S.C Section 1314(b).]

Proposed Solution- Revise the Tentative Permit to provide accurate and non-conflicting provisions that are consistent with the federal Clean Water Act.

10. Part IV.A.2 specifies the following:

Water Quality-Based Effluent Limitations (WQBELs). This Order establishes WQBELs consistent with the assumptions and requirements of all available TMDL waste load allocations assigned to discharges from the Los Angeles County MS4.

- a. Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.*

Part VI.E further indicates the following:

- c. *The Permittees shall comply with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL.*

Concern- This section effectively establishes the TMDL WLAs as numeric effluent limitations despite 40 Code of Federal Regulation section 122.44(K)(2) & (3) allowing the State Water Board to impose BMPs for control of stormwater discharges in lieu of numeric effluent limitations.

Regional Board Staff has ignored the November 12, 2010 USEPA issued revision to a November 22, 2002 memorandum in which it had “affirmed the appropriateness of an iterative BMP approach” for improving stormwater management over time.

Regional Board Staff has also ignored the June 19, 2006 report by a blue ribbon panel assembled by the State Water Board to address the feasibility of including numeric effluent limit as part of NPDES municipal, industrial, and construction stormwater permits.

Shouldn't the statewide General stormwater permits be stricter first since they are true point sources? Is it that difficult to comprehend that permits from true point sources should be stricter before area-wide permits are held to the highest standard for compliance?

The Regional Board Staff have failed to provide evidentiary support that WLAs can be achieved.

The Regional Board staff has failed to comprehend how the General Industrial, Construction, and proposed Cal Trans permit will have a detrimental affect to the Permittees of this MS4 Tentative Permit.

There are other sites such as the railroads and Cal Trans that are likely sources but a municipality does not have jurisdiction over.

Proposed Solution- WLAs must be translated to Water Quality Based Effluent Limitations, expressed as BMPs, and implementation of the BMPs will place the permittees into compliance with WLA.

11. Page 37, Part V.A. – Receiving Water Limitations

Concern – Receiving Water Limitations (RWL) language does not afford the Permittees the protection required to employ an effective program that will meet the water quality objectives. Not to mention, draft RWL language effectively exposes the Permittees to 3rd party lawsuits. RWL is a statewide issue, and as such RWL language should be consistent across all NPDES permits.

Proposed Solution – We support CASQA’s proposed RWL language and recommend that the RWL language contained in the tentative order be replaced with the CASQA model as described on the attached June 26, 2012 comment letter with the following revision:

3. In instances where discharges from the MS4 for which the permittee is responsible, ***and are persistent in a 60-month period***, (1) causes or contributes...

Anything less than the aforementioned proposed solution to this provision will place the Permittee out of compliance immediately.

12. Part VI.A.2.a. specifies the following:

Each Permittee must establish and maintain adequate legal authority, within its respective jurisdiction, to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize or enable the Permittee to:

- i. *Control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction activity and control the quality of storm water discharged from industrial and construction sites. This requirement applies both to industrial and construction sites with coverage under an NPDES permit, as well as to those sites that do not have coverage under an NPDES permit. Grading ordinances must be updated and enforced as necessary to comply with this Order;*

Concern- The authority to *control* (which suggests discretionary authority to authorize discharges) the contribution of pollutants from both industrial and construction sites, through an NPDES permit, is bestowed upon the SWRCB and RWQCBs. It appears that although these facilities are under a State General Stormwater Permit which specifically regulates stormwater and prohibits non-stormwater run-off from these sites, this requirement will unlawfully grant each municipal permittee duplicative authority to authorize any contribution of pollutants from NPDES permitted facilities to stormwater.

In addition, a failure of a construction or industrial permittee to prevent discharge of pollutants (violation of the State stormwater permit) would likely result in a violation for the Municipal Permittee. If this is indeed a joint effort of the Water Board and the Municipal Permittee (as stated by LARWQCB during the July 9, 2012 workshop), why are the permit fees not shared with the Municipal Permittees and why is the Municipal Permittee the only culpable agency receiving a violation?

Proposed Solution- The current MS4 permit specifies “*permittees shall possess the necessary legal authority to prohibit non-stormwater discharges to the storm drain system*”. We insist that the current permit language corresponding to Legal Authority

remain unchanged. Furthermore, the authority and responsibility to regulate NPDES permitted industrial and construction sites should remain with the SWRCB and RWQCBs. The risk of violation should not be deferred onto the shoulders of Municipal Permittees.

13. Part VI.A.2.a.i., iv., vii., and viii. specify that each permittee must *control* the contribution of pollutants, the discharge of spills, and the contribution of pollutants to its MS4 as well as from one MS4 to another MS4.

Concern- The word “control” erroneously suggests permittees have discretionary authority to authorize the contribution of pollutants, discharge of spills, and the contribution of pollutants to its MS4. In addition, these sections also conflict with Parts VI.A.2.a.ii., iii., ix., and the Illicit Discharge/Connection Elimination Program which cite the word “prohibit”.

Proposed solution- Replace the word “control” with the word “prohibit” to be consistent with Section 402(p)(B)(ii) of the federal Clean Water Act.

14. Part VI.A.3.a. directs each Permittee to complete the following:

Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order.

Concern- As you are aware, the County of Los Angeles is proposing a “stormwater tax” to be voted on by LA County property owners. In the current global economic recession, it would be foolish to anticipate the voting public will support a countywide stormwater tax. Evidence of such an undertaking is illustrated in Contra-Costa’s recent failure of their 2012 Clean Water Initiative. A fee-for-service (i.e. stormwater plan check, inspection fee, etc.) would only cover those specific costs but cannot be expected to support the improvement of water quality to levels in compliance of the proposed numeric effluent limitations. Permittees are already searching for and pursuing opportunities to secure fiscal resources necessary to meet the proposed requirements of this Order. This provision is superfluous.

Additionally, in Page F-31 of the Fact Sheet Maximum Extent Practicable is defined in part and states that, “in selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to the maximum extent practicable. This means choosing effective BMPs, BMPs will serve the same purpose, the applicable BMPs would not be technically feasible, or the cost would be prohibitive.” In this instance costs are a consideration in selecting BMPs. Given the current financial condition of many cities and the fact that the Water Quality Initiative may not be approved by the voters, the Regional Board must consider the cost of implementing all regulations in determining if these requirements are feasible given the financial constraints of the Permittees.

Proposed Solution- The City of Vernon suggests that this provision be omitted. In addition, the SWRCB and LARWQCB should initiate and support a proposal for a statewide stormwater tax. Furthermore, the SWRCB should distribute funds collected through the General Industrial and Construction Activity Stormwater Permits to the Permittees to support the required inspections of these permitted facilities.

15. Page 45, Part VI, C.1-6 – Watershed Management Programs, in part states the following:

1.a. states as follows, “The purpose of this Part VI.C. is to allow Permittees the flexibility to develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.”

2.a.i. states as follows, “Each Permittee shall ensure implementation of the following requirements per the schedule specified in Table 9 below:...”

Table 9. Watershed Management Program Implementation Requirements

Part	Provision	Due Date
VI.C.2.b	Notify Regional Water Board of intent to develop Watershed Management Program	6 months after Order effective date
VI.C.2.b	Submit draft plan to Regional Water Board Executive Officer	1 year after Order effective date
VI.C.2.c	Submit final plan to Regional Water Board Executive Officer	3 months after receipt of Regional Water Board comments on draft plan
VI.C.4	Begin implementation of Watershed Management Program	Upon submittal of final plan
VI.C.6.a.ii	Evaluation of Watershed Management Program and submittal of revisions to plan	Annually, beginning in 2015

Concern – The schedule grants the Permittee only 6 months to submit a Notice of Intent and a total of 12 months to submit a draft comprehensive watershed management program. This is not only insufficient but unrealistic time to organize the watershed cities and other agencies, develop cooperative agreements (MOUs), initiate the studies, collaborate and run the models based on relevant data, draft the plans, and obtain necessary approvals from municipal leadership. The timeline described in the draft permit is not sensible and is economically challenging for this great effort. It has been previously communicated that as a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. This effort involved only one Permittee.

Conversely, the Regional Board staff has placed great efforts in reiterating to the Regional Board members that they are offering flexibility, so as to provide the Permittees with options. The Permittee must review the implications of implementing its own MCM program or submit to a watershed (WMP) effort. The monitoring efforts in the WMP could only be effective if all monitoring is done at all outfalls and at exactly the same time. This would include monitoring intervals and efforts of all NPDES permits. This is not conceivably realistic, such as the Tentative Permit (as drafted) is unrealistic.

Proposed Solution - We believe that it will require at least 36 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs) could be completed and submitted within 12 months but allow a 36-month timeline for the more complicated or resource intensive efforts.

16. Page 56, Part VI.D.b.i. – Storm Water Management Program Minimum Control Measures

General Requirements – 1.b. Timelines for Implementation, states as follows: “ Unless otherwise noted in Part VI.D, each Permittee shall ensure implementation of the requirements contained in Part VI.D within 30 days after the effective date of this Order.”

Concern – Although Permittees have the option to implement the program individually, it is not realistic for a Permittee to accomplish this task in 30 days from the effective date of the permit. For example, Part VI.D.3., requires each permittee to modify its storm water management programs. Simply placing an agenda item on our City Council meeting may take at least 30 days, not to mention the resources and time this entails. Needless to state, this timeline conflicts with the Watershed Management Program Implement Timelines. Conversely, a Permittee would have to effectively decide to tackle this program individually before even having to submit a Notice of Intent within the timeline described in VI.C.2.a.i.

In the Fact Sheet it specifies that a detailed source assessment in the contributing drainage area will be prepared. This makes sense however, until this work is complete and the source of the pollutant is identified it is inappropriate to prepare an implementation plan. Once the source is identified only then can a functional implementation plan be prepared. The implementation may consist of BMP controls or may propose legislative changes to ban the source of pollutant, similar to the Brake Pad Initiative.

Proposed Solution – Provide Permittees, who opt for the MCM option, consistent timelines/deadlines as for Permittees who opt for the Watershed Management Program.

17. Part VI.D.5.e.i.(2) specifies the following:

Each Permittee shall review the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) database at defined intervals to determine if an industrial facility has recently been inspected by the Regional Water Board.

Concern- Despite the LARWQCB staff's stated understanding that the inspection of General Industrial Permitted facilities is a common effort shared by both the LARWQCB and the Permittees, this provision clearly appears to be a one-way and one sided effort.

Proposed Solution – Revised language stating that LARWQCB should notify the respective Permittee of inspections performed by its staff, especially if there are findings that may cause or contribute to an exceedance of water quality objectives and result in a violation to the Municipal Permittee.

18. Part VI.D.6.c.i.(4) indicates the following:

When evaluating the potential for on-site retention, each Permittee shall consider the maximum potential for evapotranspiration from green roofs and rainfall harvest and use.

Concern- It is the City of Vernon's understanding that the purpose of MS4 Permit is to regulate water quality; however, the purpose of this particular provision is questionable if not suspect because it does not relate to water quality. Water reuse may be a result of this permit, but by no means should be a permit compliance requirement. In addition, the Los Angeles County region is an arid climate area which would certainly create a sustainability challenge for green roofs.

Proposed Solution- The City of Vernon suggests that this provision be omitted.

19. Part VI.D.6.d.iv.(1)(d) specifies the following:

For post-construction BMPs operated and maintained by parties other than the Permittee, the Permittee shall require annual reports by the other parties demonstrating proper maintenance and operations.

Concern- This requirement appears to be superfluous and without substance in addition to lacking the technical details required to be included in such a report.

Proposed Solution- Monitor and regulate the BMP maintenance through the Commercial/Industrial Inspection Program.

20. Part VI.D.7.a.iii. indicates the following:

Each Permittee shall develop, implement, and enforce a construction program that:

iii. Reduces construction site discharges of pollutants to the MS4 to the MEP.

Concern- The permittees of the General Construction Permit are held to a Best Available Technology (BAT) and Best Conventional Technology (BCT) compliance standard. The Municipal Permittees are held to the Maximum Extent Practicable (MEP) standard. A discharge that is within the compliance standard of BAT & BCT can still be a violation under the MEP standard. This is very disconcerting that a discharge would be within compliance for General Construction Permit permittees but be in immediate violation for the Municipal Permittee.

Proposed solution- Establish TMDL Waste Load Allocations as Numeric Action Levels only, not Numeric Effluent Limits in the Tentative Permit.

21. Part VI.D.7.b. specifies the following:

Each Permittee shall establish for its jurisdiction an enforceable erosion and sediment control ordinance for all construction sites that disturb soil.

Concern- The receiving water for the City of Vernon is not impacted by, nor has a TMDL listed for sediment. This appears to be a superfluous provision for Permittees not impacted by sediment in their respective receiving water.

Proposed Solution- The City of Vernon recommends that this provision be omitted.

22. Part VI.D.7.h.ii. describes the following:

(1) Prior to issuing a grading or building permit, each Permittee shall require each operator of a construction activity within its jurisdiction to prepare and submit an ESCP prior to the disturbance of land for the Permittee's review and written approval. The construction site operator shall be prohibited from commencing construction activity prior to receipt of written approval by the Permittee. Each Permittee shall not approve any ESCP unless it contains appropriate site-specific construction site BMPs that meet the minimum requirements of a Permittee's erosion and sediment control ordinance.

(2) ESCPs must include the elements of a Storm Water Pollution Prevention Plan (SWPPP). SWPPPs prepared in accordance with the requirements of the Construction General Permit can be accepted as ESCPs.

Concern- This provision is clearly an attempt to relinquish SWPPP review and approval responsibility from the LARWQCB staff to the Permittees without allocating any funds collected through the State General Construction Permit to support the requirement. What is even more troubling is that the LARWQCB would

like it to be a permit violation if we are unable to find the resources to implement this provision. This is obvious abuse of permitting authority.

Proposed Solution- The City of Vernon insists that this provision be omitted.

23. Part VI.D.7.j.ii.(4) requires each Permittee to develop, implement, and revise as necessary, the Inspection and Enforcement Standard Operating Procedures which includes the following:
- a. Verification of GCASP coverage
 - b. Review of ESCP/SWPPP in addition to inspection of construction sites
 - c. Assessment of compliance, including the implementation and maintenance of minimum BMPs and their effectiveness.
 - d. Assessment of the appropriateness of the planned BMPs and their effectiveness.
 - e. Visual observation and record keeping
 - f. Develop a written or electronic inspection report
 - g. Tracking of the number of inspections for the inventoried construction sites to verify that the sites are inspected at the minimum frequencies required in this Order.

Concern- This inspection and enforcement provision engenders an unnecessary layer of authority and duplicates procedures that should have already been established by the General Construction Permit administering agency.

Proposed Solution- We suggest that this provision be omitted and maintain the Inspection and Enforcement Standard Operating Procedures, intended to monitor compliance with the General Construction Permit, with the LARWQCB inspection and enforcement staff.

24. Page 106, Part VI.D.9.a-f. - Illicit Connections and Illicit Discharges Elimination Program

Concern – While Permittees are being tasked with controlling and enforcing illicit discharges, the Tentative Permit expects permittees to prevent and control all illicit discharges. This is not practical or possible. In the world of criminal activity, no local, State or Federal agency can prevent every crime or terrorist attack from occurring – it is the same situation with social behaviors and being tasked with preventing all illicit discharge activity. For instance, an industrial facility can wash down their parking lot during a weekend and wash down the oil, grease and metals deposits while in residential communities feces from lawns could be washed down versus a dog-owner picking it up and throwing it in the trash.

Proposed Solution – Language needs to be consistent throughout the permit and clearly state that the CWA provision requires this permit to “effectively prohibit non-

storm water discharges.” As long as the Permittee is implementing appropriate BMPs the Permittee will not be in violation of this permit.

25. Page 111, Part VI.E. – Total Maximum Daily Load Provisions and Attachment O.
TMDLs in Los Angeles River Watershed Management Area

Concern – The critical driver in this permit is the insertion of TMDLs. The exponential rate in which TMDLs were inserted into this permit, cause great alarm for not only the Los Angeles County Permittees but state-wide and may be even nation-wide because this Tentative Permit will set a precedent. We recognize that the Consent Decree had a deadline to approve TMDLs however, Regional Board staff needs to recognize that they have the discretion to not insert numeric effluent limitations. The Tentative Permit (as drafted) establishes impossible to meet numeric limits on pollutants (TMDLs). For example, it sets a numeric determinant for copper during wet weather for the Los Angeles and San Gabriel rivers. For the entire period of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that have been estimated, to the best of their knowledge, should result in achieving the WLAs and water quality standards.

Again, we acknowledge that TMDLs must be incorporated in such a way as to require action to improve water quality however, the Regional Board must not ignore that Permittees have been active to achieve water quality objectives. For example, the Permittees have participated in the Brake Pad Partnership legislation and were successful. Needless to say, said legislation will be in effect 15-20 years from now which is after the final compliance WLA deadline of January 2028 in the Los Angeles River Metals TMDL. Implementation of this legislation will provide significant metals removal effectiveness. Assuming the average copper content in brake pads could be reduced to approximately 5-percent by the 2028 compliance milestone, brake pad replacement could greatly reduce the copper content of brake pads and achieve a load reduction.

Because the WLA deadline occurs prior to the Brake Pad regulations taking effect, hundreds of millions of dollars will be required to be spent on treatment controls in order to achieve compliance. Instead, the deadline for compliance should be extended to correspond with the source control initiative ultimately saving taxpayer dollars on programs that may not be necessary.

Proposed Solution - This illustration of the Permittees action in participating in such legislation for source control should continue during this next permit term so as to continue to develop the best management practices. Further, consideration should be granted to consider the challenges of trying to address the non-point source nature of stormwater using the iterative approach to achieve the goals. Your attention is called to EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits. This memorandum, although currently under reconsideration by EPA, states that “EPA recommends that, where feasible, the NPDES permitting

authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards.” The operative word here being, **discretion**. Albeit that the Regional Board can insert numeric effluent limitations, does not mean it should. Supplementary to the aforementioned, in Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that, ...”we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards. As such, we insist that you to translate the numeric effluent limitations to BMP-based water quality based effluent limitations or Numeric Action Levels as described in the General Construction, Industrial, and Cal Trans Permits.

Notwithstanding the above, the Fact Sheet (Attachment F) contains no reference to a Reasonable Potential Analysis, as required in the USEPA’s NPDES Permit Writers’ Manual. Federal regulations require monitoring at the outfall, and again no reference is contained in the Fact Sheet documenting the calculation of WQBELs. Did the Regional Board perform a Reasonable Potential Analysis?

26. Page 111, Part VI.E.2.a.i. – Compliance Determination, states as follows:

A Permittee shall demonstrate compliance at compliance monitoring points established in each TMDL or, if not specified in the TMDL, at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E. Part VI.C.5 (Integrated Watershed Monitoring and Assessment).

Concern – Compliance determination must take into account pollutant sources outside of the Permittees control such as aerial deposition, natural resources, etc.

Proposed Solution – Insert language that clearly does not place the Permittees out of compliance if there is an exceedance(s) due to aerial deposition, natural sources, or causes that are out of the control of the Permittee, etc.

27. Page 111, Part VI.E.2.b.ii. – Compliance Determination, states as follows:

In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.

Concern – The LACFCD is owner to at least half of the MS4 in our jurisdiction. Does this mean that the LACFCD needs to control the contribution of pollutants in a portion of our jurisdiction?

Proposed Solution – Provide clarification.

28. Page 114, Part VI.E.2.e.i.(1). - Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations, states as follows:

A Permittee shall be deemed in compliance with an applicable final water quality-based effluent limitation and/or final receiving water limitation for the pollutant(s) associated with a specific TMDL if any of the following is demonstrated:

(1) There are no violations of the final water quality-based effluent limitation for the specific pollutant at the Permittee's applicable MS4 outfall(s)²; ...

Concern – As stated under comment number 10 above, this section effectively establishes the TMDL WLAs as numeric effluent limitations despite 40 Code of Federal Regulation section 122.44(K)(2) & (3) allowing the State Water Board to impose BMPs for control of stormwater discharges in lieu of numeric effluent limitations. Opportunity should also be provided to the Permittees for source control.

Regional Board Staff has ignored the November 12, 2010 USEPA issued revision to a November 22, 2002 memorandum in which it had “affirmed the appropriateness of an iterative BMP approach” for improving stormwater management over time. Also, Regional Board Staff has ignored the June 19, 2006 report by a blue ribbon panel assembled by the State Water Board to address the feasibility of including numeric effluent limit as part of NPDES municipal, industrial, and construction stormwater permits.

Shouldn't the statewide General stormwater permits be stricter first since they are true point sources? Is it that difficult to comprehend that permits from true point sources should be stricter before area-wide permits are held to the highest standard for compliance?

The Regional Board Staff have failed to provide evidentiary support that WLAs can be achieved.

The Regional Board staff has failed to comprehend how the General Industrial, Construction, and proposed Cal Trans permit will have a detrimental affect to the Permittees of this MS4 Tentative Permit.

There are other sites such as the railroads and Cal Trans that are likely sources but a municipality does not have jurisdiction over.

Proposed Solution – WLAs must be translated to Water Quality Based Effluent Limitations, expressed as BMPs, and implementation of the BMPs will place the permittees into compliance with WLA.

29. Page 115, Part VI.E.4.a. - State Adopted TMDLs where Final Compliance Deadlines have Passed, states as follows:

Permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule.

Concern – The reference made here to comply **immediately** is arbitrary. Opportunity is not provided for a strategic plan that will focus on BMP implementation. This requirement will automatically result in permit violation in addition to fruitless expenditures and waste of limited public resources.

Proposed Solution – Revise language to provide Permittees the opportunity (without the risk of obstructions from permit violations) to produce a plan, perform pilot projects and implement BMPs to ensure limited resources and funds are not being wasted on programs that may not provide the benefits that were initially calculated.

30. Page 115, Part VI.E.4.a. - State Adopted TMDLs where Final Compliance Deadlines have Passed, states as follows:

Where a Permittee believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, a Permittee may within 45 days of Order adoption request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.

Concern – A TSO is an enforcement action and requires that the Board make findings of a discharge or threat of a discharge that will violate prescribed requirements. The language implies that the Permittee is admitting guilt. Additionally, TSO's do not protect Permittees from third-party litigation.

Proposed Solution – TSO's need to be interchanged with Permit reopeners. Reconsiderations of TMDLs are absolutely necessary so as to re-set the compliance schedules to align with the Watershed Management Plans. This would minimize the risk of third-party litigation and unnecessary loss of limited public resources by the Permittees.

31. Page E-12, Attachment E, V. TMDL Monitoring Plans – Monitoring and Reporting Program

Table E-1. Approved TMDL Monitoring Plans by Watershed Management Areas states that the Los Angeles River Nitrogen Compounds and Related Effects TMDL Monitoring Plan was due on March 23, 2005. The County as Principle Permittee submitted a letter to the Regional Board that they would include nutrient testing at the L.A. River mass emissions monitoring station in Long Beach and this would fulfill

monitoring requirements. Regional Board accepted this as the permittees' monitoring plan.

Concern – The LARWQCB nor the Tentative Permit has acknowledged receipt of the subject monitoring plan.

Proposed Solution – The Permit should acknowledge receipt and approval of said Monitoring Plan.

32. Page O-7, Attachment O.D.2., TMDLs in Los Angeles River Watershed Management Area

D.2. Los Angeles River Watershed Bacteria TMDL states, "Permittees shall comply with the following final water quality-based effluent limitations for discharges to the Los Angeles River and its tributaries during dry weather according to the schedule in Table O-1, and during wet weather no later than March 23, 2037."

Concern – Deadlines placed on segments are contradictory with the flow of the river. Segment B/Reach 2 is near the middle to lower end of the River. It is difficult to grapple how it makes any sense to clean the middle of the River when the upper Segments may still be contributing bacteria into the River. Hence, contribution will flow down the River to Segment B and A. The Bacteria TMDL Staff Report dated July 15, 2010 states on page 64, Section 9.4.6, Prioritization of segments; MS4 dry weather implementation, ..."The concepts used in prioritization of TMDL implementation segments were evaluated during a September 2009 CREST stakeholder workshop. Through extensive discussions involving a broad spectrum of stakeholders, four primary locations where water contact activities are known or likely to occur were categorized as the highest priority." "Segment A and B of the Los Angeles River: Much of this portion of the Los Angeles River has a path on the bank of the River⁵, and *while entering the channel is not permitted*, water contact has been observed in these segments." Further language in this section reiterates that presumptions were made and based on discussions.

The criteria used to select the order of segments for implementation purposes was flawed. Reaches north of Segment B are much more likely to be used for recreational purposes. The fact that one or two individuals were observed entering the river in Segment B does not compare with the number of individuals entering the river north of Segment B. Much of the river in Segment B contains vertical walls making it nearly impossible to enter the river at these locations. In addition, the beaches in Long Beach will be improved no matter which segment is brought into compliance first. Lastly, there is a concern with environmental justice issues by targeting low income neighborhoods with the initial stage of implementation.

Proposed Solution – A reopener of the Los Angeles River Bacteria TMDL is imperative. We recognize that Permittees should assist in the reduction of bacteria in this concrete-lined channel; however, it makes most sense to treat segments starting

from the top and continuing downstream. It does not make sense to expend public resources in cleaning the middle to lower ends of the River when contributions of bacteria are likely from the upper segments. The Permittees do not have an unlimited source of funds.

33. The economic costs for compliance with the Tentative Permit

Concern - Requirements above and beyond that of the Maximum Extent Practicable that add significant additional costs such that an action would not be financially feasible would be considered impracticable. Such requirements would place a financial burden on the Permittees that has a significant negative impact on our annual General Fund budget would be considered impracticable (not consistent with the cost criterion and the logistics criterion with respect to the difficulty of local agencies to increase taxes to cover additional expenses).

Proposed Solution - The Maximum Extent Practicable (MEP) definition needs to be revised to reflect an updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit. The Tentative Permit's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Water Resources Control Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end, it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹

¹Op. Cit., page 35.

Attachment A- Definitions

34. The current MS4 Permit defines Authorized Discharge as:

“any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order”.

The Tentative Permit defines Authorized Non-Stormwater Discharge as:

“discharges that are not composed entirely of storm water and that are either: (1) separately regulated by an individual or general NPDES permit and allowed to discharge to the MS4 when in compliance with all NPDES permit conditions; (2) authorized by USEPA49 pursuant to sections 104(a) or 104(b) of CERCLA that either (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA or (ii) are subject to (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j); or (3) necessary for emergency responses purposes, including flows from emergency fire fighting activities.

Concern- The changing of definitions appears to be arbitrary and capricious.

Proposed Solution- Maintain the current definition of Authorized Discharge as identified on the current MS4 Permit.

Attachment D- Standard Provisions

35. Part I.A.2. directs Permittees to complete the following:

Dischargers must comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement [40 CFR section 122.41(a)(1)].

Concern- This provision, or any similar provision, is not in the current MS4 Permit. This provision establishes standards and prohibitions Permittees must comply with which are not specified in this Order. As the Tentative Permit is currently written (without the subject provision) it will already be an economical, logistical, scientific, legal, and likely “impossible” challenge to achieve compliance. Responsible planning and spending of limited public resources cannot be performed for items outside of the Tentative Permit. This provision is not sustainable.

Proposed Solution- The City of Vernon insists that this provision be omitted.

36. Part I.F. specifies the following:

Dischargers shall allow the Regional Water Board, State Water Board, USEPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to [40 CFR section 122.41(i); California Water Code sections 13267 and 13383]:

4. *Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the California Water Code, any substances or parameters at any location [40 CFR section 122.41(i)(4); California Water Code sections 13267 and 13383].*

Concern- Because of the dynamic variability of stormwater and non-stormwater discharges, the City of Vernon would like an opportunity to witness and/or acquire duplicate samples during any RWQCB, SWRCB, or US EPA sampling operations. In addition, if sampling operations will be performed on City of Vernon property, an encroachment permit is required prior to sampling activity.

Proposed Solution- Staff (or duly authorized representatives) of the RWQCBs, SWRCB, and US EPA shall obtain proper encroachment permits in addition to providing a minimum of 72-hour notification to the appropriate Permittees Stormwater Program Manager prior to any sampling operations within the jurisdiction of the Permittee.

Attachment E- Monitoring & Reporting

37. Part II.A. describes the following:

The primary objectives of the Monitoring Program are to:

1. *Assess the chemical, physical, and biological impacts of discharges from the municipal storm water sewer system (MS4) on receiving waters.*

Concern- It is the City of Vernon's understanding that the purpose of MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. The imposing of State and federal responsibilities on local municipal governments is an unfunded mandate.

Proposed Solution- Provide legal justification for this transfer of jurisdiction or omit as a primary object to assess the "biological impacts" of discharges from the MS4.

38. Part II.E.1.a indicates the objective of the receiving water monitoring is to:

determine whether the receiving water limitations are being achieved.

Concern- The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes "b" and "c" no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Proposed Solution- Omit section 1.a and make it clear that 1.b relates to ambient monitoring that is not the responsibility of MS4 Permittees.

39. Part II.E.1.c specifies that the objective of the receiving water monitoring is to:

Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.

Concern- It is the City of Vernon's understanding that the purpose of MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. The imposing of State and federal responsibilities on local municipal governments is an unfunded mandate.

Proposed Solution- Provide legal justification for this transfer of jurisdiction or omit as a primary object to assess the "biological impacts" of discharges from the MS4.

40. Part II.E.2.b. indicates the following:

Storm water outfall based monitoring; including TMDL monitoring requirements specified in approved TMDL CMPs (see Table E-1). The objectives of the storm water outfall based monitoring program include the following:

b. Determine whether a Permittee's discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,

Concern- Monitoring cannot be used to determine compliance with wet weather WQBELs based on TMDL WLAs for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that:

we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the

*public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.*²

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research

Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Proposed Solution- Omit this provision.

41. Part XI.A., titled Pyrethroid Insecticides Study Requirements specifies the following:

Each Permittee shall perform a Pyrethroid Insecticides study to accomplish the following objectives:

- a. Establish baseline data for major watersheds*
- b. Evaluate whether Pyrethroid Insecticide concentrations are at or approaching levels known to be toxic to sediment-dwelling aquatic organisms.*
- i. Determine if Pyrethroids discovered are from urban sources.*
- ii. Assess any trends over the permit term.*

Concern- This provision is clearly an unfunded mandate. This provision is not part of the federal Clean Water Act; therefore, California Water Code section 13263 requires that the Water Boards consider economic factors described in section 13241 as they apply to these specific restrictions. Why does our MS4 permit require permittees to participate in a pyrethroid study if the pesticide is being banned? Also, the new regulations appear to ban the use of the pesticide in sanitary sewer.

²United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

Proposed Solution- Provide evidentiary support indicating a proper economic analysis was completed, distribute adequate funding to Permittees for the implementation and maintenance of this provision, or omit this provision from the Order.

Attachment H- Bioretention / Biofiltration Design Criteria

42. Part 5 indicates the following:

Waterproof barriers may not be placed on the bottom of the biofiltration unit, as this would prevent incidental infiltration which is critical to meeting the required pollutant load reduction.

Concern- Part VI.D.6.c.ii.(2) specifies that alternative compliance, such as biofiltration, can be allowed if technical infeasibility demonstrates the project is situated in a;

- (d) Brownfield development sites,*
- (e) location where pollutant mobilization is a documented concern.*

The purpose of this alternative compliance option is to avoid the creation of a groundwater contamination catastrophe; however, if a waterproof barrier on the bottom of a biofiltration unit is restricted in a location where pollutant mobilization is a documented concern, the Tentative Permit potentially will be creating an even greater environmental problem for generations to come.

Proposed Solution- Revise the Bioretention / Biofiltration Design Criteria to allow waterproof barriers to be placed on the bottom of biofiltration units.

Before the LARWQCB adopts this order, the City of Vernon requests a revised copy of the Tentative Order with an opportunity to comment after it has been revised.

The City of Vernon is one of 62 voting members of the Los Angeles Permit Group (LAPG). Please note that the City also supports comments submitted to you from the LAPG. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP letter.

The City of Vernon appreciates the RWQCB's staff efforts in providing workshops with information as we progress with the next iteration of the Los Angeles County Municipal Stormwater Permit. The City will continue to cooperate with the RWQCB to protect the environment. Please contact Ms. Claudia Arellano at (323) 583-8811 extension 258 or Mr. Jerrick Torres at extension 204 if you have any questions or comments.

Sincerely,



Samuel Kevin Wilson, P.E.
Director of Community Services
& Water



Leonard Grossberg, MPA, R.E.H.S.
Interim Director/Health Officer
Health & Environmental Control Department

SKW/LG/jt/ca
Enclosure

c: City of Vernon Council
Los Angeles Regional Water Quality Control Board members
Senator Kevin De Leon, State Capital, Sacramento, California 95814
Los Angeles Permit Group



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The "iterative process language" now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal's decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court's opinion addressed two key issues for California's MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

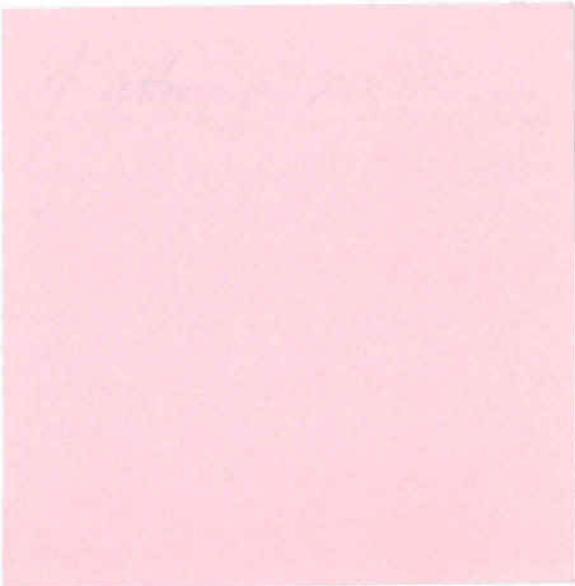
Sincerely,



Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision





California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

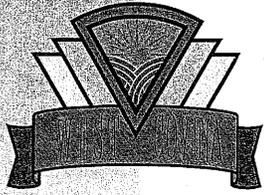
cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



Public Works Department

July 19, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

The City of West Covina Public Works Department is pleased to submit the attached comments for your consideration in re: Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to be complimentary and more specific to the issues raised in the LASP group letter. The City's comment letter also contains additional issues not addressed in the LASP group letter.

Thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me at (626) 939-8425.

Sincerely,

Shannon Yauchzee
Public Works Director/City Engineer

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

2. The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will

development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond "to" the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*. The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

pursuant to Sections 104(a) or 104(b) of the federal comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only "to" the MS4 makes this issue academic. A permittee's only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. **The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.**
 - a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is "a" because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

*The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.*

According to Clean Water Act §502, effluent monitoring is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

40 CFR §122.2 defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

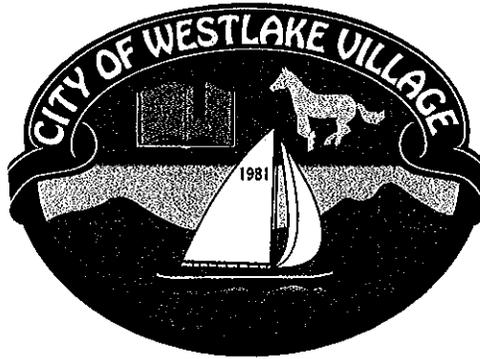
Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies "*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*"

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS



SUSAN McSWEENEY
Mayor

PHILIPPA KLESSIG
Mayor Pro Tem

ROBERT SLAVIN
Councilmember

MARK RUTHERFORD
Councilmember

NED E DAVIS
Councilmember

July 23, 2012

VIA U.S. MAIL AND E-MAIL (PDF)

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Dear Mr. Ridgeway:

The City of Westlake Village ("City") submits the following comments to the Los Angeles Regional Water Quality Control Board's ("Regional Board") Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001 ("Permit"). The LA Permit Group has submitted comments regarding the Permit which the City joins and incorporates herein. The City reserves the right to make additional legal comments on the Permit prior to the close of the public hearing to adopt the Permit and at the public hearing itself.

On behalf of the City of Westlake Village, we hereby submit the following initial comments on the Permit:

1. The Time Provided to Review the Permit Is Insufficient and Denies Permittees Due Process of Law

The period provided to review and comment on the Permit has been unreasonably short given the breadth of the Permit. Beginning on March 28, 2012, Regional Board staff issued a series of Staff Working Proposals pertaining to key sections of the Permit. Regional Board staff has used their Staff Working Proposal workshops as a justification for the hurried manner in which the Permit was developed. The same justification was used by the Executive Director in denying the LA Permit Group's request for a time extension.

This justification, however, fails for several reasons. First, Regional Board staff gave the permittees only a few weeks to comment on each of the Staff Working Proposals. Furthermore, the Regional Board staff did not respond to any comments, leaving

permittees to guess at which requirements would be incorporated into the Permit. Seeing the Permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the Permit provisions and to prepare comments.

Second, despite all the working proposals, workshops, and meetings, the permittees are left with a Permit that cannot be complied with from the first day the Permit goes into effect, due to the Receiving Water Limitation (RWL) and the Waste Load Allocations (WLA) requirements that could subject the permittees to third party lawsuits.

We believe the Regional Board wants a review process that is open and transparent. Providing permittees only forty-five (45) days to comment makes this impossible. To develop and provide relevant and meaningful comments, each permittee must first:

- Read a 500 page Permit;
- Study the 500 page Permit to understand how the provisions work together;
- Compare it to the last Permit;
- Evaluate the resource needs to comply with the Permit;
- Determine the fiscal and organizational impacts on City services, which requires coordination with several City departments;
- Conduct technical and legal review of the Permit and prepare comments;
- Present information to and gather feedback from the City Council. Staff needs time to conduct a thorough review of the items listed above, prior to presenting them to the City Council; and
- Prepare written comments.

To ensure a proper review of the Permit, the City hereby requests an extension of 180 working days to include a Revised Tentative Permit to be released with a 45-day comment period. The intent of a Revised Tentative Permit is to ensure the permittees have the opportunity to review any changes made to the existing draft and provide comments prior to the Permit adoption hearing. Additionally, this extension request will resolve a conflict our city management and officials have with the current September 6-7, 2012 hearing date, which overlaps with the annual League of Cities conference in San Diego.

The extreme speed with which the Permit is being circulated and reviewed and proposed to be adopted amounts to a denial of the City's due process rights and is contrary to state and federal law. By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the Clean Water Act, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir.

1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.") For the reasons stated above, the Permit does not satisfy the Clean Water Act standard and violates the City's due process rights.

2. The Permit Should Be Revised to Provide that Implementation of BMPs is Sufficient to Constitute Compliance with the Permit

Permittees should be able to achieve compliance with the Permit through a best management practice ("BMP") based iterative approach. Regional Board staff has previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the Permit goes into effect. This necessarily means the Permit cannot require immediate strict compliance with water quality standards. Yet the Fact Sheet states that a party whose discharge "causes or contributes" to an exceedance of a water quality standard is in violation of the Permit, even if that party is implementing the iterative process in good faith. See Fact Sheet at pp. F-35-38. These positions are incompatible and effectively render the iterative approach meaningless.

As written, the Permit requires that all discharges to receiving waters must immediately meet water quality standards to avoid violating the Permit. This presents an impossible standard for permittees to meet, especially given the fact that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately. Even for TMDLs for which the Regional Board issues time scheduling orders, such orders will not protect a permittee from third-party lawsuits for measured exceedances, based on the Permit's current language. Even if such lawsuits are unfounded, the legal costs to defend such suits are enormous. For this same reason, numeric effluent limitations for final wasteload allocations should not be incorporated into the Permit, especially where we are dealing with TMDLs that have been rushed through due to the *Browner* consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.

A BMP-based approach should be utilized in the Permit for final wasteload allocations and as a definitive method of compliance for all Permit requirements, as outlined in EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." ("EPA Memorandum"). See also 40 C.F.R. § 122.44(k).

To accomplish this purpose, the City supports using the receiving water limitation language proposed by CASQA. Otherwise, cities are potentially vulnerable to third party lawsuits such as those brought against the City of Stockton and the County of Los Angeles by third parties within the last five years.

Furthermore, the EPA Memorandum is clear that an increased reliance on numerics should be coupled with the "disaggregation" of different storm water sources within permits. See EPA Memorandum at pp. 3-4. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Regional Board should not allow this inequitable and legally unjustifiable result to occur.

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.

3. The Permit Improperly Intrudes Upon the City's Land Use Authority in Violation of the Tenth Amendment of the U.S. Constitution

To the extent that this Permit relies on federal authority under the Clean Water Act to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article XI, section 7 of the California Constitution also guarantees municipalities the right to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." See also *City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. See *Berman v. Parker*, 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the Clean Water Act and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless "Legislature has **removed** the constitutional police power of the City to regulate" in the area); see Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

If the Permit is adopted, the City believes that this Permit could establish the Regional Board as a "super municipality" responsible for setting zoning policy and requirements

requirements, but would also have to sue the Regional Board itself to obtain the requested relief. The City does not believe this is the intent of the Regional Board. Rather than adopting programs that dictate the precise method of compliance, the Regional Board should collaborate with the City and other permittees to develop a range of model programs that each municipality could then modify and adopt according to its own individual circumstances.

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the Clean Water Act, and thus exceed the "Maximum Extent Practicable" ("MEP") standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. See *City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeals has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal. App. 4th 898, 914-16 (2007).

The Permit goes beyond federal law, as the Permit is at least twice as long, and in some cases, three times as long as other MS4 permits developed by other Regional Boards in the State of California, such as the Lahontan Regional Board and the Central Valley Regional Board, not to mention permits developed by EPA. This means that either some Regional Boards are failing to impose federally mandated requirements pursuant to the Clean Water Act, or the more likely explanation is that the Regional Board is imposing requirements that go beyond federal law.

A. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which state funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees (Permit at pp. 38-40);
- The public information and participation program (Permit at pp. 58-60);
- The industrial/commercial facilities program (Permit at p. 63);
- The public agency activities program (Permit at pp. 56-63); and
- The illicit connection and illicit discharge elimination program (Permit at pp. 106-109).

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an

unfunded mandate. (See, e.g., Permit at pp. 38-40.) These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The requirements of this Permit exceed past permits, meaning that the Regional Board is requiring a higher level of service than in prior permits. The same applies to the Permit's onerous requirements to inspect and regulate other permittees and potential permittees.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Boards fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

B. The Receiving Water Body Requirements Render the Permit an Unfunded Mandate

If strict compliance with state water quality standards in receiving water bodies is required—including state water quality standard-based wasteload allocations—in the MS4 itself or at outfall points and in receiving water bodies, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided. See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the Clean Water Act and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

C. The City Does Not Necessarily Have the Requisite Authority to Levy Fees to Pay for Compliance With the Order

The ability to fund the Permit through bond measures or tax increases does not render the Permit's program ineligible for a subvention claim because such funding mechanisms are contingent upon voter approval, in some cases requiring supermajority votes. *Howard Jarvis Taxpayers Assoc. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). The money available from other sources is both too speculative and limited to cover all or even some of the costs imposed by the Permit. Such speculative funding sources cannot count as viable sources of funding so as to preclude a subvention claim. Cal. Gov't Code, § 17556(f). Furthermore, even if some portions of the Permit's programs can be covered by user fees, these fees will not come close to covering all such costs, meaning permittees' general funds will have to be utilized to cover substantial portions of these costs. Cal. Gov't Code, § 17556(d) (the ability to charge fees only defeats a subvention claim where the fees are sufficient to fully fund the program.)

5. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for going well beyond the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. The relevant portion of Water Code Section 13267 states:

"(b) (1) In conducting an investigation . . . the regional board may require that . . . any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

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

(b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required."

The Permit goes far beyond a requirement that a permittee "monitor" the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request "other information", such requests can only be "reasonably" imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermitttee's discharge. Rather, the Permit requires copermitttees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. See Permit at p. 108.

6. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter into Contracts and Coordinate With Other Copermitees

The Regional Board cannot require the City to enter into agreements or coordinate with other copermitees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other copermitees as part of their stormwater management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. See Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

7. The Permit Fails to Consider Economic Impacts As Required by Water Code Sections 13000 and 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13241 requires the Regional Board to include "[e]conomic considerations" with its consideration of the Permit. As demonstrated above, the Regional Board is incorrect in its assertion that consideration of economics is not required in this Permit. See Permit at pp. 24-25. Because, as demonstrated above, the Permit requires new and higher levels of service in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Fact Sheet's open skepticism of municipal financial reports is troubling, and indicates the Regional Board has not taken permittees' actual expenses seriously.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not even been approved, much less voted on by the public. See Fact Sheet at pp. F-142-43. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should delay its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the copermitees will be left to implement the Permit's requirements without the funds to do so. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for a majority of the compliance deadlines

set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

The Permit also fails to consider the significant additional costs that TMDLs will impose. The incorporation of TMDLs and the massive expansion of monitoring requirements in the Permit, which also trigger the need for additional inspectors, will inevitably cause the copermitees' costs to skyrocket. Furthermore, speculations about what people may be willing to pay for cleaner water and social benefits from clean water have no real effect on cities' bottom lines. Finally, the Permit fails to account fully for all the expenses that implementing minimum control measures will impose. For all these reasons, the consideration of economic impact is entirely lacking, which violates state law.

8. The Permit's Imposition of Joint and Joint and Several Liability for Violations is Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the Clean Water Act.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to

July 23, 2012

Page 10

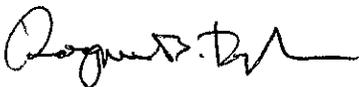
prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. See Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The City is dedicated to the protection and enhancement of water quality. The City, however, has other functions that require funding as well. If this Permit is adopted as proposed, even in the best case scenario, spending cuts to other crucial services such as police, fire, and public works are certain. The permittees' dwindling general funds simply cannot take the financial hit the Permit is poised to impose on them. The City believes a more measured approach is necessary, especially regarding how compliance in this Permit is achieved.

As public agencies, all parties involved in the NPDES permitting process have the obligation to carry out their duties in a responsible, realistic, and reasoned manner. Requirements that tether public agencies to impractical positions are counterproductive and violate our sacred charge as representatives of the people. The City is committed to working with the State and Regional Boards in order to achieve our mutual goals and looks forward to engaging in a constructive dialogue with Regional Board staff on these issues.

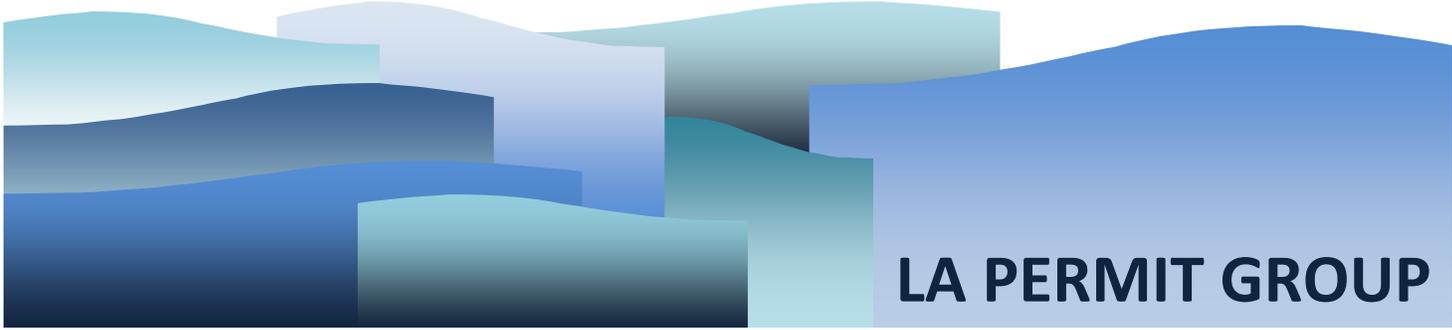
Should you have any questions regarding this letter or applicability of the attached LA Permit Group comments to the City, please contact Joe Bellomo at (805) 279-6856. Please update the City's contact information in Table 2 of the Permit with his information.

Sincerely,



Raymond Taylor
City Manager

cc: John Knipe, City Engineer
Terence Boga, City Attorney
Joe Bellomo, Stormwater Program Manager



LA PERMIT GROUP

July 23, 2012

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SUBJECT: Comments on the Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX; NPDES Permit NO. CAS004001, for MS4 Dischargers within the Los Angeles County Flood Control District

The LA Permit Group (LAPG) appreciates the opportunity to provide comments on the subject Draft Order for the Los Angeles region. The Los Angeles Permit Group is a consortium of municipalities that was formed to ensure Los Angeles' stormwater is managed properly, both for flood control and water quality protection (LA Permit Group agencies list provided in Exhibit A).

The LA Permit Group was formed, to accomplish several important objectives, including:

- Promoting constructive collaboration and problem-solving between the regulated community (municipalities) and the Los Angeles Regional Water Quality Control Board (LARWQCB);
- Assisting in development of a new NPDES Permit that is capable of integrating the protection of water quality with other watershed objectives in a cost-effective and science-based manner;
- Focusing limited municipal resources on implementation of water quality protection activities that are efficient, effective and sustainable.

Over 62 Los Angeles County municipalities have actively participated in the effort to develop negotiations points and provide comments throughout the MS4 NPDES Permit development process. Comments and negotiations points are developed by each of the LA Permit Group's four Technical Sub-Committees (Development Programs, Reporting & CORE Programs, Monitoring, and TMDLs), which are then approved by the LA Permit Group. The group's consensus is represented by the Negotiations Committee. This comment letter and accompanying exhibits reflect a collaborative effort to develop a permit that will lead to water quality protection in a cost effective manner. We have a number of major and minor concerns with the Draft Order. Our comments are organized around the following major issues:

- Receiving Water Limitations
- TMDLs
- Monitoring
- MCMs
- Watershed Management Program
- Cost Implications

Our recommendations for each issue are noted in **bold** in this letter and our detailed comments on the Draft Order are provided in the Exhibits to this letter (Exhibit B).

We also want to note that the Draft Order contains a number of errors and inconsistencies. This is not surprising given the sheer magnitude of the draft document, which is the basis for our multiple requests for more time to review the more than 500 pages of Permit. As stated in our letter dated July 2, 2012 (incorporated in this letter as attached – Exhibit C) and in Public Comments at the July 12, 2012 Regional Board Meeting, the comment deadline of July 23, 2012 is far too short to address all the potential issues and concerns. On several occasions, the Regional Board staff has used the Staff Working Proposal process and workshops as a justification for the expeditious manner in which the Draft Order was developed and the curtailed 45-day public comment period. This justification is misplaced for several reasons:

- Each Staff Working Proposal was issued with only a few weeks for stakeholders to provide comments on what may be considered the most significant increase in public effort to address water quality issues in the past 20 years;
- Although we provided comments on the working proposal, it is unclear to us how the Regional Board staff addressed our comments. In some cases changes were made and other cases no changes were made. In both cases no explanation was provided. As a result we have attached our previous comment letters for the record (Exhibit D);
- By rolling out different working proposals at different times it was difficult to understand how the key provisions interacted with each other. It was only after the full draft Order was issued did we see the interaction (or lack of interaction) of the provisions;
- It is the LA Permit Group's goal to cooperatively develop the MS4 Permit to support the Regional Board's policy goal of a permit that would reduce the need for litigation. This goal is important to us as we believe that good policy and regulations are those that are developed reasonably, that Permittees are capable of complying with. Even though we have worked hard and in good faith with Regional Board staff to try to develop a Permit that is protective of water quality in a cost-effective and science-based manner, the draft Order places the Permittees in a very vulnerable position for not immediately complying with water quality standards (see our discussion below regarding Receiving Water Limitations);
- It is also important to note that stormwater managers have an obligation to adequately inform other municipal departments, legal counsel, city management and elected officials on the fiscal impact of this draft Order. The time to properly evaluate the Permit, assess its financial, legal, and personnel impacts, and inform our cities cannot be accomplished in the 45 day review period; and
- We have also heard from many cities that their executives and elected officials had registered for the League of California Cities Conference on September 5-7, 2012, months prior to the Permit adoption hearing notice. We request that the adoption hearing be rescheduled after September 6-7, 2012 to allow for elected officials and executive of the Permitted agencies to attend the hearing; it is imperative that the adoption hearing be scheduled at a time that municipal decision makers have the opportunity to attend and provide comments at the hearing.

It is essential that municipalities be given an additional 180 days to review the Permit and develop alternatives for the substantial issues found in this Draft Order. Based on the issues listed above and as communicated in our July 2nd letter and at the July 12th Regional Board meeting, we request that the our appeal for additional time be reconsidered. This could be accomplished by an additional review of a tentative Order before an adoption hearing is held.

Receiving Water Limitations

As previously outlined in our 05/14/12 comment letter on the working proposal, the Receiving Water Limitations (RWL) language in the Draft Order creates a liability to the municipalities that is unnecessary and counterproductive. We have the following significant concerns with the RWL language included in the Draft Order:

- Recent court decisions have created a new interpretation of the RWL that creates a liability for the Permittees without a commensurate increase in protection of water quality.
- The RWL as written is not a federal requirement so it is not necessary to maintain the current language.
- The RWL as written is contradictory to the Watershed Management Program.
- Alternative approaches are available to address the concerns and maintain the intent of the language in the approach; we request that RWQCB utilize this alternative language.

We feel that the RWL as included in not necessary and does not support the improvement of water quality as discussed in more detail below.

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*¹ (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm². In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

¹ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

² January 30, 2002. Letter from Francine Diamond, Chair, Los Angeles Regional Water Quality Control Board

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how the RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As noted above, significant monitoring by other MS4s in the state had demonstrated that MS4 discharges pose water quality issues and with the proposed outfall monitoring detailed in the Draft Order we would expect the runoff characteristics to be similar to other MS4 discharges in the State. As the RWL language is currently written, municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. While the Regional Board staff has noted that enforcement action is unlikely if the Permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits in addition to enforcement action by the Regional Board. This is in fact what happened to the City of Stockton. The City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. This was a series of pollutants not covered by a TMDL, but that dealt with water quality exceedances. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling effect on productive storm water programs. Also in the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action.

It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these Permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach (iterative/adaptive management) to address numerous TMDLs and non-TMDL water quality problems within the watershed based program in a systematic way. This is a fair and constructive approach to meet water quality standards.

Receiving Water Limitation Language as Written is Not Required under Federal Law

We believe Federal Law does not require that the RWL language be written as presented in the Tentative Permit. Based on the language presented in other Permits throughout the United States, the proposed language is not the only option. The RWL provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed Permits (e.g. Washington D.C.³) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State policy and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long-term water quality improvement.

Receiving Water Limitation Language as Written is Contradictory to the Watershed Management Program

Beyond the legal/liability aspect of the RWLs we would submit that in a practical sense the RWL, as currently written, does not support the Permit's goal of protecting water quality and works against the Watershed Management Program proposal. On the one hand, the municipalities will develop watershed management

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

programs that are based on the highest priority water quality issues within the watershed. Consistent with the Draft Order provision for the Watershed Management Program, we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal, the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State, there will be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms, but according to the current RWL proposal the municipalities must address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

We have requested that this language be revised on several occasions including written comments, workshop comments, and meetings with staff; however this issue has not yet been resolved in the Tentative Permit. An explanation is requested as to why this language remains as presented in the Draft Order is requested. Alternative Approaches are Available to Address Concerns.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

The California Association of Stormwater Quality (CASQA) has developed draft language that we feel should be used in lieu of the current language. The language provides specificity in compliance and subjects Permittees who are not engaged in good faith in the iterative process to enforcement without unnecessary and counterproductive liability for the majority of Permittees who are diligently implementing stormwater programs. We feel that the CASQA language maintains the intent of the current RWL while addressing the concerns outlined above.

Recommendation: Develop Receiving Water Limitation language consistent with the California Association of Stormwater Quality language that was submitted in a comment letter on Caltrans Permit (Exhibit E) and on the Statewide Phase II Permit which defines action thresholds, an iterative/adaptive management process, and avoids unnecessary liability.

Total Maximum Daily Loads

As outlined in our May 12, 2012 comment letter on the TMDL working proposal, the incorporation of TMDL WLAs into the Tentative Permit is of critical importance to the LASP. **WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.** The best mechanism to achieve water quality standards is by implementing BMPs, evaluating their effectiveness and implementing additional BMPs as necessary to meet TMDL WLAs. Without this process, and due to the requirement in the Draft Order to meet numeric values, our ability to effectively implement BMPs is hampered by the legal issues associated with Permit compliance.

The Draft OrderDraft Order proposes to incorporate more TMDLs than any other Permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the Permit is a critical issue to the LA Permit Group and will likely set a significant precedent for future MS4 Permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The recent experience with the Santa Monica Bay Beaches Bacterial TMDL reopener demonstrates just how difficult, if not impossible, obtaining serious reconsideration of established TMDLs, irrespective of the weight of evidence presented. The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft OrderDraft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach. We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.

The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:

- The inclusion of numeric effluent limitations for final TMDL WLAs.
- The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.

Numeric Effluent Limitations for Final TMDL WLAs

The LA Permit Group opposes the incorporation of final WLAs solely as numeric effluent limitations in the proposed Permit language. Although staff has discretion to include numeric limits where feasible, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the Permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)⁴), State Board orders (Order WQ 2009-0008, In the Matter of the Petition of County of Los

⁴ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

Angeles and Los Angeles County Flood Control District, at p. 10)⁵ have affirmed that WLAs can be incorporated as non-numeric effluent limitations.

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds⁶. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states “Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective.” The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA’s 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits⁷. This memorandum (which is currently being reconsidered by U.S. EPA) states that “EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards” (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based**

⁵ “[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California’s NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board’s findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit.” (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

⁶ Storm Water Panel Recommendations to the California State Water Resources Control Board “The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

⁷ U.S. EPA, *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

effluent limitations for final WLAs in this Permit. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, Permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.

TMDLs Where Compliance Date Has Already Occurred

The LA Permit Group is also concerned with the major policy decision related to the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES Permit. There is a fundamental problem with the TMDL process whereby new information is not being incorporated into TMDLs. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue Permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent, guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. The Regional Board should use the reopener as an opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. Final WLAs should be delayed until serious reconsideration of the data that established the TMDLs so that the TMDLs can reflect information gathered during the implementation period. This will allow critically important data to be utilized to selectively modify time schedules in the TMDLs. Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs

through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

Recommendation:

- **Provide a provision which requires that a TMDL be reconsidered in light of information that was not available when the TMDL was developed before the final WLAs become effective.** Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.
- **Translate WLAs into WQBELs, expressed as BMPs.**
- **State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.**
- **Provide for four compliance options for both interim and final WLAs:**
 - **Implement Actions/BMPs consistent with Watershed Management Program**
 - **Compliance at the outfall (end of pipe)**
 - **Compliance in the receiving water (river, creek, ocean)**
 - **No direct discharges**
- **Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs.**

Monitoring

The proposed monitoring program requirements have significantly increase compared to our current required efforts. Although we understand the need for monitoring to support the Permit, we believe there are number of issues within the MRP that need to more fully vetted and discussed. These issues include:

- **Receiving water monitoring should be consistent with SWAMP protocols including the requirement that ambient monitoring be conducted two days following a storm event.** Currently the receiving water monitoring is proposed to be conducted during storm events. Such an approach will not support the need to assess the receiving water quality consistent with the SWAMP approach that is used as the basis for 303(d) listing.
- **The focus and scope of non-stormwater monitoring is not commensurate with the environmental issues associated with dry weather flows.** We believe the non-stormwater monitoring should be to help identify illicit discharges and not for assessing the multitude of objectives noted in the MRP, II.E.a – c. Furthermore we would submit that the MS4s should focus its non-stormwater monitoring on discharges “into” our MS4 and not on discharges “through” or from our MS4s that may cause or contribute to exceedances of water quality standards. This is consistent with CWA section 402(p)(B).
- Regarding regional studies (MRP XI.A – B), the LAPG would submit that these studies should be conducted by the Regional or State Board. But if the Permit does require special studies, **the Permit needs to establish the mechanism/option for Permittees to participate in the studies without having to conduct the studies on an individual basis.** Furthermore, the Regional Board should be the agency to lead and coordinate these studies. The MRP appears to read that each and every Permittee must conduct the regional studies.
- **Toxicity monitoring should be limited to the receiving water only and not at the outfalls.** It’s important to establish whether is a toxicity issue in the receiving water before conducting this

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations⁸ has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

- Insufficient time is allotted to prepare Coordinated Integrated Monitoring Plans (CIMP). Since the monitoring for TMDLs should continue per the TMDL schedules, the Permittees should be allowed sufficient time to prepare the CIMPs. To prepare a CIMP the Permittees will need more than a Letter of Intent to proceed. **We recommend that the Draft Order be modified to allow 12 months to submit a Memorandum of Agreement to participate in a CIMP and 24 months to submit the complete CIMP.** The time required to award the monitoring contract is 3 months, at least 6 months are needed to obtain Los Angeles County Flood Control Encroachment Permits, thus at least 9 months is needed before commencing monitoring.

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors⁹. This constraint, as well as USEPA position¹⁰ that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

The Draft Order does not provide adequate and reasonable timelines for the start-up and implementation of the Minimum Control Measure requirements. For example, the Draft Order in provision VI.D.1.b.i requires the majority of MCMs to begin within 30 days, unless otherwise noted in the order. There are a number of new/enhanced provisions and it is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit

⁸ http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.

⁹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

¹⁰ See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

Group requests that the Regional Board provide a revised timeline for implementation and phasing-in of the Minimum Control Measure requirements. **We request that the Permit allow a 12 month time schedule to transition from our current efforts to the new and enhanced MCMs requirements.**

Shifting of State Responsibility to the MS4

The Draft Order shifts much of the State responsibilities regarding the State's General s for Construction and Industrial Activities to the municipalities. These new responsibilities have significant financial responsibilities on the permittees (ex. plan reviews, inspections time, reporting, enforcement, etc.). This is especially true for the Statewide General Construction Activities Permit (GCASP) and Provision VI.D.7. A few examples of where the Draft Order either shifts the responsibility or actually exceeds the requirements of the GCASP are listed below:

- Maintaining a database that overlaps with the States' own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality;
- Requiring the quantification of soil loss is redundant with the GCASP and adds additional MS4 costs.
- **Inspections will be increased by more than 200% and are redundant since the State should be responsible for implementation of its own permit particularly in light of the fact that the State collects a permit fee for implementation.**

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to GCASP and General Industrial Activities Permit requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current understanding of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. The City and County of Los Angeles as well as the City of Santa Monica have developed and adopted Low Impact Development ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Each of these ordinances required tailoring of standards to address the unique characteristics of their city (ex. size, land uses, soils, groundwater, watershed(s), hydrology, etc.). **The Permit should reference the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County.** Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details should be contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA. Ultimately, it may be more constructive if the Regional Board created a template for the Permittees to use.

New Development MCM

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and need for clarification with the other MCMs we find the New Development MCM the most challenging and unsupportable. The provision is difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. We have provided specific comments on this provision but it suffice to say that the LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCM:

- Storm design criteria
- Alternative compliance option offsite mitigation
- Treatment control performance benchmarks
- BMP tracking and inspection
- BMP specificity and guidance
- Hydromodification

Storm Design Criteria

The Draft Order in Provision D.6.c.i (page 70) requires the developer to retain the stormwater quality design volume as calculated by either the 0.75 inch storm or the 85th percentile 24 hour storm whichever is greater. We take exception to the requirement to select the largest calculated volume. In all Permits to date in California these two design criteria were judged to be equivalent. **We recommend that the Draft Order be modified to specify that the two criteria are equivalent.** In fact, the current stormwater 2001 Permit for Los Angeles County includes four design criteria to choose from for the stormwater volume. The additional effort to assess every project to choose between two equivalent design criteria makes little sense and adds cost to any project. We recommend that the developer be allowed to choose between the two criteria without the need to calculate the largest.

Alternative Compliance Option - Offsite Mitigation

The Draft Order goes into great detail discussing an alternative compliance option to full on- site retention of the design storm volume. The alternative option takes the form of an offsite mitigation project. As currently structured it is highly unlikely that anyone will opt for this alternative compliance option. Probably the biggest hurdle for developers to overcome if they are to pursue offsite mitigation is the requirements that they must treat the project site runoff to the levels identified in Table 11. This combined with the requirement that the offsite mitigation project must be equivalent in pollutant load reduction as the original project site equates to the developer removing essentially twice as much pollutant loads as he would had accomplished on the project site had the site been able to retain the load onsite originally. This is inherently unfair. **We would recommend that the developer be required to remove only the pollutant loads that would have been removed at the project site at the mitigation site and if the mitigation site cannot meet that load reduction then the developer can implement treatment controls at the project site for the remaining differential.** Such an approach is fair and will be more readily accepted by the development community than the current proposal.

Treatment Control Performance Benchmarks

The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 Permit. However, there is a significant different between the Permits. The Ventura County's NPDES MS4 Permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. **We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura Permit and is based**

on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.

BMP Tracking and Inspection

In the Draft Order provision VI.D.6.d the Permittees are being required to track and inspect post construction BMPs including LID measures. The provision does allow that such effort can be addressed by the project developer but even with this consideration the provision is onerous for city staff as this would still require significant staff time (ex. plan reviews, data entry, letter preparation and enforcement, etc.). This is especially true for LID measures which if planned and designed correctly will include a large number of measures (planter boxes, infiltration trenches, swales, etc.) on every site. Furthermore most of the LID measures will be infiltration type measures which are difficult to inspect and should be only inspected in wet weather when one can ascertain that the LID measures are operating correctly. This inspection concept when taken to the extreme will mean that municipalities will be inspecting LID measures all over the community and only during rain events. This is just flat unreasonable and cost prohibitive for the municipality. Furthermore, the cost for implementation (e.g. inspection, monitoring, enforcement, etc.) are not shown to be commensurate with any corresponding improvement in water quality. **We recommend that the tracking and inspection of post construction BMPs be limited to only the conventional BMPs (e.g. detention basins, wetlands, etc.); alternatively require the MS4 to spot check a limited number of LID measures to ascertain how well they are operating.**

BMP Specificity

The Draft Order in Attachment H provides detail specifications for biofiltration and bioretention BMPs. The LA Permit Group believes that such specificity, although well intended, is counterproductive. Such specificity is equivalent to a wastewater NPDES Permit specifying the grain size in the multimedia filtration unit. It is more appropriate to establish the performance standard for the BMP and to allow the MS4 to develop design specifications to meet the standard. **We recommend that Attachment H be removed and a provision be established that establishes a collaborative approach to promote a technical guidance manual that would include the design specifications for bioretention/biofiltration.**

Hydromodification

The LAPG would submit that it is premature to change the hydromodification criteria, specifically the interim criteria. In our current 2001 order, Permittees were required to develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study. **We believe it more constructive to keep with the previously developed hydromodification criteria and not revised it for the interim until the final criteria can be developed by the State.** A change now and then one later on just adds confusion to the development process and creates additional work for a limited or non-existent water quality improvement. The effort under the 2001 Permit should be sufficient until such time the final criteria are developed.

Public Agency MCM

The Draft Order identifies a number of requirements for public agency MCMs. Our detailed comments are attached, but there are two issues we want to highlight here. First is provision VI.D.8.h.vii (page 102) which specifies additional trash BMPs regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as the MCM requires prioritization, cleaning and inspection of catch basins as well as street sweeping and other management control measures to address trash at public events. And then even if the

Municipality is controlling trash through these control measures, the Municipality must still install trash excluders (see page 102 regarding “additional trash management practices”). This makes little sense and **the LA Permit Group would submit that if the initial control measures are successful, then the “additional trash management practices” are unnecessary (as evident by the lack of a TMDL).**

The second issue pertains to provision VI.D.8.d (page 94) regarding retrofitting opportunities. Provision VI.D.8.d.i requires that the MS4 develop an inventory of retrofit opportunities within the public right of way but then in provision VI.D.8.d.ii, the Draft Order requires the Permittees screen existing area of development. Furthermore in provision VI.D.8.d.iii the MS4 must prioritize all existing areas of development. Reading these provisions in whole would seem to indicate that the MS4 must identify all potential retrofit sites (private or publically owned) and to prioritize the sites. This is a contentious issue and should be addressed carefully. Stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, but the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. **We recommend that for this Permit term that the retrofit provision (i.e. inventory, screening, and prioritization) be limited to public right of ways lands only.**

ID/IC MCM

The Draft Order identifies a number of provisions that are fundamental to an Illicit Connection/Illegal Discharge program. These provisions include

- III. Discharge Prohibition,
- VI.A.2 Standard Provisions – Legal Authority,
- VI.D. 9 IC/ID Elimination Program,
- Attachments E, Monitoring and Reporting and
- Attachment G Non-stormwater Action Levels.

When combined, the ID/IC program will require a significant effort and not always effective. We have provided specific comments on these provisions in the Exhibit to this letter but we would like to highlight two of the more significant issues. First, is the magnitude of the dry weather monitoring being required. The TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. **As such, the TMDL monitoring program should be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.**

The second issue pertains to the non-stormwater action levels established in Attachment G. One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a real impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the Draft Order are derived from Basin Plan, CTR, or COP water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address NAL issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality. **We recommend that the Permit allow the Watershed Management Programs to guide the customization of the NALs based on the highest water quality priorities in each**

watershed and to establish them at a level that would provide better assurance that illicit discharges can actually be found and not have every outfall become a high priority outfall. If NALs are not established through the Watershed Management Programs, or Permittees should be required to use the default NALs and approach identified in Attachment G.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a Watershed Management Program. However, one of our biggest concerns continues not be addressed, is the Draft Order proposed timeline for developing the watershed management program(s). The Draft Order allows the municipalities only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate and run the models based on relevant data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. **We believe that it will require at least 24 months to develop a draft plan that is comprehensive, analytically supported, and implementable. Alternatively we would suggest a phased approach where some initial efforts (e.g. MOUs, retrofit inventory) could be completed and submitted within 12 months but allow 24 month timeline for the more complicated or resource intensive efforts.**

We also offer the following comments regarding the Watershed Management Program (our line item by line item review and comments are attached):

- The Draft Order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 Permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). **We request that Permittees be allowed to demonstrate that some sources are outside the Permittee's control and not responsible for managing or abating those sources.**
- **The Permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.**
- **The Permit should clarify that the adaptive management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.**
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current Draft Order results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm Regional Board staff resources and has provided limited feedback to the municipalities. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined. **Furthermore, we recommend that the adaptive management process be applied every two years instead of the every year frequency noted in the Draft Order.**
- It is unclear how the current implementation of our stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, **the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.**

- **Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.**
- **The timing of revising the Watershed Management Programs is in conflict and confusing. There should only be one revision to the Watershed Management Program, and only when adaptive management/iterative process demonstrates that the modification is warranted.**
- **The adaptive management/iterative approach and timing should be consistent between individual Permittees (“jurisdictional watershed management program”) and the watershed management program.**

Cost/Economic Implications

Regarding fiscal resources, the LA Permit Group would like to reemphasize the limited parameters in which municipalities operate. The Draft Order (page 40) requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit. We have reservations as to whether this provision is legal given that it appears to violate the State Constitution, Article XVI, Section 18. That being said, Permittees have a limited amount of funds that are under local control. Any additional funds needed to raise money for stormwater programs would need to come from increased/new stormwater fees and grants. **New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote. Therefore, raising new fees is an item that is not under direct control of the municipalities – the Permit language should reflect this.** Furthermore, in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We request that the Regional Board develop the Permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

The LA Permit Group also wants to address the issue of whether or not these Permit requirements constitute an unfunded mandate. The Fact Sheet makes a unilateral statement that the Regional Board has determined that the Permit requirements do not exceed Federal requirements and therefore are not unfunded mandates. No back up information is provided to substantiate this claim. Our request is for the Regional Board to substantiate this statement for each section of the Permit. We also want to point out that the court decisions on unfunded mandates claims are still on appeal, and it is premature to conclude on the merits of the appeal.

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo¹¹ from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between \$17 billion and

¹¹ Cass R. Sunstein, Executive Office of the President, OMB memorandum for the Heads of Executive Departments and Agencies regarding Cumulative Effects of Regulations, March 20, 2012.

\$42 billion. Los Angeles River Watershed Bacteria TMDL could cost up to \$5.4 billion for full, inclusive, implementation costs for that watershed alone for only one pollutant. Even if the Water Quality Funding Initiative passes (and it is far from guaranteed to pass), it would take a full 20 years dedicating the entire fund to the Los Angeles River Bacteria TMDL to pay for these requirements. It would require over 60 years paying for the larger estimate. In the fact sheet, Regional Board staff stated that the TMDL costs were considered during the TMDL adoption process. However, given Executive Order 13563, we would submit that the Board should consider all costs associated with the management of stormwater. With these types of economic implications, **it is critical that this Regional Board and their staff more carefully evaluate comments and provide additional, extended comment periods for these requirements.**

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement¹² that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectfully request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

¹² S. Unger's 7/13/12 letter to H. Maloney and the LA Permit Group.

Exhibit A

LA Permit Group

City of Agoura Hills	City of Gardena	City of Pico Rivera
City of Alhambra	City of Glendale	City of Pomona
City of Arcadia	City of Glendora	City of Redondo Beach
City of Artesia	City of Hawthorne	City of Rolling Hills
City of Azusa	City of Hermosa Beach	City of Rolling Hills Estates
City of Baldwin Park	City of Hidden Hills	City of Rosemead
City of Bell	City of Huntington Park	City of San Dimas
City of Bell Gardens	City of Industry	City of San Gabriel
City of Bellflower	City of Inglewood	City of San Marino
City of Beverly Hills	City of La Verne	City of Santa Clarita
City of Bradbury	City of Lakewood	City of Santa Fe Springs
City of Burbank	City of Lawndale	City of Santa Monica
City of Calabasas	City of Los Angeles	City of Sierra Madre
City of Carson	City of Lynwood	City of South El Monte
City of Claremont	City of Malibu	City of South Gate
City of Commerce	City of Manhattan Beach	City of Torrance
City of Covina	City of Monrovia	City of Vernon
City of Culver City	City of Montebello	City of West Covina
City of Diamond Bar	City of Monterey Park	City of West Hollywood
City of Duarte	City of Paramount	City of Westlake Village
City of El Monte	City of Pasadena	

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Agency/Reviewer: LA Permit Group

Comment No.	Doc. Reference		Comments	
	Page	Section	Apr-12	Jul-12
1	General	General	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	Same comment
2	17	Findings	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.	The Tentative Order, states " ... each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary." If the MS4/catch basin is owned by the LACFCD, does this mean that the LACFCD needs to control the contribution of pollutants?
3	pages 111 - 123 and Attachments K - R	TMDL	<p>Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration, the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.</p> <p>Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.</p>	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
4	pages 111 - 123 and Attachments K - R	TMDL	Continued use of the zero summer dry weather exceedance level will make compliance with the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".	This is a critical issue that was not addressed in the recent reopener. The reference reach approach and the overriding policy that permittees are not responsible for pollutants outside their control, including natural sources, needs to be included
5	pages 111 - 123 and Attachments K - R	TMDL	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.	The problem with sites monitored two days a week has not been corrected. Please provide clarification that this issue could be addressed and would supersede the TMDL if submitted in an integrated monitoring plan. This is critical for summer dry weather and 5-day per week sites.

6	pages 111 - 123 and Attachments K - R	TMDL	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards," "receiving water limitations," and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather, and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".	In effect the effluent limitations are stricter than the receiving water standards. This is inconsistent with law and creates a situation in which permittees are out of compliance at the effective date of this permit. Please adjust so that limits are consistent with standards and not exceeding standards.
7	pages 111 - 123 and Attachments K - R	TMDL	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.	A table is still needed and should be developed. Perhaps referred to in this section but placed in the Watershed Management Plan and then approved by Executive Officer with the plan.
8	pages 111 - 123 and Attachments K - R	TMDL	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]	Same comment
9	pages 111 - 123 and Attachments K - R	TMDL	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.	Same comment
10	pages 111 - 123 and Attachments K - R	TMDL	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.	Please clarify that this situation would be covered under the new provisions for USEPA established TMDLs opens the door for allowing Permittees to address this through their plans.
11	pages 111 - 123 and Attachments K - R	TMDL	The Machado Lake Trash WQBELs listed in the table at B.3 of Attachment N in the Tentative Order appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.	Same comment

12	pages 111 - 123 and Attachments K - R	TMDL	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures.</p> <p>Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>	Same comment
13	pages 111 - 123 and Attachments K - R	TMDL	<p>The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item C.3.c of Attachment N: "By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."</p>	Same comment
14	pages 111 - 123 and Attachments K - R	TMDL	<p>Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.</p>	Partially addressed--the table provided in the Tentative Order is not the detailed Attachment D which clarifies which agencies are responsible for which portions of the TMDL--need to include that table.
15	pages 111 - 123 and Attachments K - R	TMDL	<p>The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item E.5 of Attachment N: "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."</p>	Same comment
16	pages 111 - 123 and Attachments K - R	TMDL	<p>City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee</p>	Addressed in Table K-3 of the Tentative Order but not in Table K-2 of the Tentative Order.
17	pages 111 - 123 and Attachments K - R	TMDL	<p>Recommend not listing specific water bodies in E.5.b.i.(1).(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of for full capture devices.</p>	Not addressed, still don't know why Santa Monica Bay Marine Debris was not included in the list at E.5.b.i.(1).(c) but it is listed in E.5.a.ii and Attachment M Section B.
19	pages 111 - 123 and Attachments K - R	TMDL	N/A	Suggest wet weather compliance be partially defined by a design storm.

20	pages 111 - 123 and Attachments K - R	TMDL	N/A	<p>Regional Board staff has incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: <i>we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards .</i></p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:</p> <p><i>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. <u>This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</u></i></p> <p>The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.</i></p>
21	pages 111 - 123 and Attachments K - R	Table K-8	Please remove, in its entirety, the Santa Ana River TMDLs	Same comment
22	pages 111 - 123 and Attachments K - R	E.1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, the MS4 permit needs to contain language allowing permittees to convert group-based limitations to individual permittee based limitations.	Same comment
23	111	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment
24	111	E.2.a.i	N/A	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E Part VI.C.5 (Integrated Watershed Monitoring and Assessment)."

25	112	E.2.b.iv	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.	Same comment
26	112	E.2.b.v.(2)	N/A	This provision should not require that the permittee demonstrate that the discharge from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.
28	113	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.	This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.
29	114	E.2.e	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	Same comment
30	116	E.4.a	This provision states "A-Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.	Same comment
31	116-123	E.5	Please clarify that cities are not responsible for retrofitting.	Same comment
32	116-123	E.5.a - c	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments to identify the Trash TMDLs. Otherwise, this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, it is unclear whether it was an oversight or intentional?	Same comment
33	116-123	E.5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.	Same comment
34	116-123	E.5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.	Same comment
35	116-123	E.5.c.i.(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	Same comment
36	Attachment L	D.3 a - c	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.	The table was adjusted, but did not eliminate the interpretation of number of exceedance days that are not expressly completed in the Santa Clara River TMDL. Remove all interpretation of number of exceedance days other than what has been expressed in the original TMDL number of days of exceedances without interpretation or recalculation.

37	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees to submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.	Same comment
38	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording in the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for the Permittee to develop BMP-base compliance efforts to meet interim goals.	Same comment
39	Attachment N	TMDLs in the Dominguez Channel and Greater Harbor Waters WMA	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Attachment K, Table K-4." Then the Table in Section E.2.b Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"	Same comment
40	Attachment O, Page 3	C	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.	Same comment
41	Attachment O, Page 7	D.4	Why are "Receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.	Same comment
42	Attachment P	TMDLs in the San Gabriel River WMA	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.	Same comment

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	General	General	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than number.	Changes were made but it is unclear that the overall program would be collectively only held to the 85th percentile storm if working in multiple areas, and individual sites only if the Watershed Management Program states that individual sites would be responsible.	
2	46	Process	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs	Same comment	
3	46-47	Table 9 and Process	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs.	Same comment. However, there could be a phased approach in which a permittee could submit early actions within this timeline, while more time is offered for the resource intensive aspects.	
4	46-53	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.	Table 9 and Watershed Management Implementation are still inconsistent. The table says submittal and the Watershed Management Program Implementation states upon approval. Please make these consistent	
5	47	Program Development	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	Same comment	
6	48	3.a.ii	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point	Thank you for removing category 4. Category 3 puts a burden on cities during this permit cycle. In the next permit term, when permittees have a better understanding of sources and location of the high priority pollutant additional actions may be warranted. At this time including category 3 adds an investigative burden that is unwarranted given the substantial increase in requirements and monitoring that are already included in this draft tentative order.	
7	52	Reasonable Assurance Analysis	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility	Same comment	
8	112	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.	In the Tentative Order, permittees must notify the Regional Board 6 months after the Order's effective date on whether it plans to participate in the development of a Watershed Management Program. Given this, a sub-watershed will not know whether all permittees will participate or not. It should also be noted that allowed non-stormwater discharges and other NPDES permit discharges may be the cause of exceedances/violations and not the "group of permittees."	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	37-38	All	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue	There are several NPDES Permits, including the Caltrans Permit and others, that adjust the Receiving Water Limitation language in response to new interpretations. Currently, the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. LASP has provided the Regional Board staff with sample language. It is imperative that the Regional Board works with the State Board on this very important issue. It is critical that the LA draft tentative order Receiving Water Limitation language be adjusted to ensure cities working in good faith are not subject to enforcement and third party litigation.	

Agency/Reviewer: **LA Permit Group**

Comment		Doc. Reference		Comments	
No.	Page	Section	Apr-12	Jul-12	
1	13-26	Findings	several related		<p>Please add findings regarding the iterative process.</p> <p>The iterative process is a process of implementing, evaluating, revising, or adding new BMPs to attain water quality standards, including total maximum daily load (TMDL) waste load allocations (WLAs). The State Water Resources Control Board (State Board) has affirmed, in several precedential water quality orders (including WQ 99-05 and 2001-15), the inclusion of the iterative process in MS4 permits. As the State Board noted in WQ 2001-15:</p> <p>This Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. We adopted an iterative procedure for complying with this requirement, wherein municipalities must report instances where they cause or contribute to exceedances, and then must review and improve BMPs so as to protect the receiving waters.</p> <p>The iterative process goes hand-in-hand with the Receiving Water Limitation provision of this order, which is intended to address a water quality standard exceedance. An MS4 permit is a point source permit, which is defined by §40 CFR 122.2 to mean outfall or end-of-pipe. Attainment of a water quality standard in stormwater discharge is achieved in the effluent or discharge from the MS4 through the implementation of BMPs contained in a Stormwater Quality Management Plan (SQMP). If a water quality standard is frequently exceeded as determined by outfall monitoring relative to an ambient condition of the receiving water (during the 5-year term of the Order) the permittee shall be required to propose better-tailored BMPs to address the exceedance. The process includes determining (1) if the exceedances are statistically significant and if so, would require the permittee to (2) identify the source of the exceedance; and (2) propose new or intensified BMPs to be implemented in the next MS4 permit – unless the Executive Officer determines that a more immediate response is required.</p> <p>(continued from previous page) The iterative process does not apply to non-stormwater discharges. Section 402(p)(3)(B)(ii) of the Clean Water Act only prohibits non-stormwater discharges to the MS4 and not from it as is the case with stormwater discharges. This is because Congress set two standards for MS4 discharges: one stormwater and one for non-stormwater. As noted in WQO 2009-008, the Clean Water Act and the federal storm water regulations assign different performance requirements for storm water and non-storm water discharges. These distinctions in the guidance document, the Clean Water Act, and the storm water regulations make it clear that a regulatory approach for storm water - such as the iterative approach we have previously endorsed - is not necessarily appropriate for non-storm water.</p>

2	24 and Attachment F, Pages 146-149	Unfunded Mandates Section of Fact Sheet and Permit	several related	It is incorrect to assert an outcome on the unfunded mandates issue in a permit; this has nothing to do with protecting water quality. The unfunded mandates process has not completed a process and these assertions are opinion. Since the Fact Sheet is part of the permit, remove this section. There are many errors and incorrect assumptions, especially around the level of effort required for this permit when compared to the current permit, and the economic issues that are incorrect.
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Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	General	General	It is appropriate to have an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute; this should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 permittees jurisdiction. We would request that also included in this category should be emergency releases caused by water line breaks which are not necessary, but are unexpected and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
2	General	General	Since it could take 6 months for an agency to decide if they want to join in the development of a Watershed Management Plan or just modify their current Stormwater Management Program to comply with the new permit MCMs, the implementation of the new MCMs should follow this timeline. In the interim the permittees will be required to continue implementing their current Stormwater Management Program.
3	26	A.	<p>RB staff proposed language requires the permittees to “prohibit non-stormwater discharges through the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally. This prohibition is inconsistent with legal authority provisions in the federal regulations since 40 CFR 122.26(d)(1)(ii) which requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40 CFR 122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that:</p> <p><i>“Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]:</p> <p><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers . Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an ‘effective prohibition’ would require separate NPDES permits for non-storm water discharges to municipal storm sewers”</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>“requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.”</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges from the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>“No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.”</i></p> <p>Thus we recommend that staff eliminate the “from” language at both Part III.A.1.a. and Part III.A.2.</p>
4	28	A.2.b.vi	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should definitely be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
5	33-36, Table 8	Discharge Prohibitions	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDC category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.

6	39	A.2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>
7	39	A.2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
8	39	A.2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
9	39	A.2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible, to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
10	40	A.2.b	<p>Staff proposal states: "Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement... Each permittee shall submit this certification annually..."</p> <p>To sign this statement, chief counsel will have to analyze this 500 page Permit, analyze the municipal code, and prepare a statement as to whether actions can be commenced and completed in the judicial system. An annual certification is redundant and unnecessary in addition to being extraordinarily costly. At most, legal analysis should be done once during the Permit term. Otherwise, please delete this requirement.</p>
11	40	A.3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>
12	40	A.3.a	<p>Staff proposal states: "Each Permittee shall exercise its full authority to secure the fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean when the exercise of a city's right to tax comes with consequences and no guarantee of success? Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
13	40	A.3.c	<p>Staff proposal states: "Each permittee shall conduct a fiscal analysis... to implement the requirements of this Order."</p> <p>Most MS4's do not have adequate funding to meet all requirements of the Tentative MS4 Permit. A Permit requirement to secure funding is overreach. Please delete this section.</p>
14	58	D.4.a.i.(2)	<p>Staff proposal states: "To measurably change the waste disposal and storm water pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
15	60	D.4.d.i.(2).(b)	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
16	60	D.4.d.i.(3)	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
17	63-66	D.5.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>

19	67	D.6.a.i.(3)	The stated objective of mimicking the predevelopment water balance is not consistent with the requirement that the entire design storm be managed onsite. Please consider allowing subtracting the predevelopment runoff from the design volume or flow.
20	69	D.6.b.ii.(1).(a)	Please clarify whether this paragraph applies to what is existing on the site or what is being redeveloped.
21	70	D.6.c.i.(2).(b)	Consider removing the "whichever is greater" wording. The two methods are considered equivalent and the 85 th percentile was calculated to be the 0.75-inch for downtown Los Angeles. Currently, the 0.75-inch storm criterion has been used throughout the County for uniformity. While requiring the 85 th percentile to be used instead appears more technically appropriate, requiring calculating both criteria and using the greater value appears punitive.
22	70	D.6.c.i.(4)	Consider deleting this sentence since it is redundant with item VI.D.6.c.i.1 and green roofs are not feasible not only based on the provisions of this order but also due to regional climate and implementability considerations.
23	70	D.6.c.ii.(2)	Add "lack of opportunities for rainwater use" as one of the technical infeasibility criteria to acknowledge the fact that most of the type of development projects cannot utilize the captured volume of water.
24	72	D.6.c.iii.(1).(b). (ii)	The requirement for raised underdrain placement to achieve nitrogen removal is inconsistent with standard industry designs and is based on limited evidence that this change will improve nitrogen removal. Furthermore, by raising the underdrain, other water quality problems may result such as low dissolved oxygen and bacterial growth due to the septic conditions that will be created.
25	72	D.6.c.iii.(2).(b)	The requirement to provide treatment for the project site runoff when offsite mitigation is provided is punitive and unfair considering that an alternative site needs to be retrofitted to retrain the equivalent volume. Please consider removing the on-site requirement when mitigation occurs in an offsite location.
26	72	D.6.c.iii.(4)	The conditions listed for offsite projects are overly restrictive. Also, considering legal and logistical constraints regarding offsite mitigation, this alternative is not very feasible.
27	75	Table 11	The concept of establishing benchmarks for post construction BMPs was initially developed in the 2009 Ventura MS4 permit. However there is a significant different between the permits. The Ventura County's NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing BMP. In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead post construction BMPs must meet all the benchmarks established in Table 11. Unfortunately, no one traditional post construction BMP (non-infiltration BMPs) is capable of meeting all the benchmarks and thus the developer will not be able to select a BMP. We recommend that provision VI.D.6.c.iv.(1)(a) (page 74) be modified so that the selection of post construction BMPs is consistent with the Ventura permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Table 11 benchmarks.
28	75	D.6.c.v.(1).(a). (i)	Erosion Potential (Ep) is not a widely used term in our region, and may not be the most appropriate term to be used as an indicator of the potential hydromodification impacts.
29	76	D.6.c.v.(1).(a). (iv)	The requirement for development of a new Interim Hydromodification Control Criteria is unnecessary considering there is already peak storm control requirements in the existing MS4 Permit and that the State Water Board is finalizing the statewide Hydromodification Policy.
30	77	D.6.c.v.(1).(c). (i).1	The requirement to retain on site the 95 th percentile storm is excessive and inconsistent with all other storm design parameters that appear in this order. It may also not be an appropriate storm in terms of soil deposits for the soil deprived streams such as Santa Clara Creek. Again, consider referring to the statewide policy for a consistent and technical basis of the hydromodification requirements.
31	80	D.6.d.i.1	The requirement of 180 days for the "Local Ordinance Equivalence" may be difficult to be met due to the typical processing and public review period for changes to local municipal codes. Consider revising this provision to require immediate start of this effort instead.
32	83	D.7.a.iii	MEP should be changed to BAT and BCT for consistency with the State's General Construction Permit (GCASP).
33	83	D.7.d	Consider introducing a minimum threshold for construction sites such as those for grading permits. As proposed, minor repair works or trivial projects will be considered construction projects and will unnecessarily be subject to these provisions.
34	83	Table 12	Some of the listed BMPs will not be applicable for all construction sites. Consider replacing the title of the Table 12 to "Applicable Set of BMPs for Construction Sites"
35	84-91	D.7.e-j	All these provisions refer to construction sites of greater than one acre. These sites are subject to the General Construction Permit provisions and within the authority of the State agencies. Towards ensuring compliance with these regulations, the State is collecting a significant fee that covers inspection and tracking of these facilities. We are disputing the need to establish an unnecessary parallel enforcement scheme for these sites. This is consistent with the RWQCB member(s) voice at one of the workshops.
36	84-91	D.7.g-j	Refer to the State's GCASP and its SWPPP requirements to avoid delicacy.
37	85	D.7.g.ii.(9)	There is no need to introduce a new term/document of Erosion and Sediment Control Plan for construction sites that are already subject to GCASP's SWPPP requirements.
38	87	Table 13	Delete. This table is the same as Table 12.
39	90	Table 17	The suggested inspections could not possibly be accommodated based on current resources because of the concurrent need to visit all sites. However, if the GCASP funding is transferred for locally-based enforcement, an increase number of inspections may be accommodated.
40	90	D.7.j.ii.(2).(a)	Consider deleting this requirement as being unnecessary. The placement of BMPs may not be needed based on the season of construction and the planned phases.
41	94	D.8.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete VI.D.8.d.
42	94	D.8.d.i	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.8.D... The goals of the existing development retrofitting inventory are to address the impacts of existing development through regional or sub-regional retrofit projects that reduce the discharges of storm water pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.

43	95	D.8.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
44	96	D.8.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for...flood management projects" Flood management projects need to be clearly defined.
45	102	D.8.h.vii.(1)	This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
46	103	D.8.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.
47	106-110	D.9	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40 CFR 122.26. Please revise each mention of "outfall" to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
48	107	D.9.b.i	Please revise the proposed language to "Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located." It is not known if a discharge is illicit until the investigation is completed.
49	107	D.9.b.iii.(1)	"Illicit discharges suspected of being sanitary sewage... shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
50	Attachment A	Definitions	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: <i>"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> <i>"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i> <i>"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i> The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
51	Attachment A, Page 1	Definitions	The biofiltration definition limits the systems that allow incidental infiltration. Many municipal ordinances and established engineering practices will not allow even incidental infiltration if the planter boxes are located adjacent to a building structure. Thus, this definition will exclude the most common types of planter boxes which logically have to be placed next to the building to collect roof runoff. For this reason, consider allowing biofiltration to include planter boxes without incidental infiltration since they may be the only applicable BMPs.
52			Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
53			Omit the comment, "Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernible..." The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
54			Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
55			The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11.c.i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and..."
56			"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.

[1] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

[2] 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

Agency/Reviewer: **LA Permit Group**

Comment	Doc. Reference		Comments
No.	Page	Section	Jul-12
1	Multiple	Multiple	The use of the HUC-12 watershed for limits is a good start but there needs to be some flexibility in its use to insure that the HUC-12 truly reflects the actual watershed boundary.
2	Multiple	Multiple	The rain gages to be used for determining a wet versus dry weather day should be selected by the agencies and approved by the Regional Board. Since monitoring plans will be on a regional basis the use of 50% of County rain gages in a watershed may not be necessary. Plus, predictions do not necessarily use County rain gages.
3	Attachment E, Page 3	II.A.1	Omit as a primary objective to assess the "biological impacts" of discharges from the MS4. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to assess biological impacts of discharges and to set water quality regulations to prevent adverse biological impacts. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
4	Attachment E, Page 4	II.E.1	<p>Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) indicates:</p> <p><i>The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.</i></p> <p>The only definition of "ambient" monitoring is defined by SWAMP protocol as being 72 hours after a storm event.</p> <p>Regarding monitoring purposes "b" and "c" assessing trends in pollution concentrations should be: (1) limited to ambient water quality monitoring; and (2) Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.</p> <p><i>Recommended Corrective Action:</i> Clarify that RWL monitoring is only in the ambient condition as defined by SWAMP and that ambient monitoring is performed as part of the SWAMP and is not the responsibility of MS4 permittees.</p>
5	Attachment E, Page 4	II.E.1.c	Omit Item c. The MS4 Permit is to regulate water quality. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to "Determine whether the designated beneficial uses are fully supported as ...aquatic toxicity and bio-assessment monitoring." This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
6	Attachment E, Page 4	II.E.2.a	<p>Outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to monitor progress towards achieving TMDL WLAs that are expressed in the receiving water. Instead, Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs, if necessary.</p> <p>Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.</p> <p><i>Recommended Correction:</i> Either utilize MALs, in lieu of numeric WQBELs, to measure progress towards achieving TMDL WLAs expressed in the receiving water or eliminate MALs entirely.</p>
7	Attachment E, Page 4	II.E.3.a	<p>Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.</p> <p><i>Recommended Correction:</i> Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the IC/ID program.</p>
8	Attachment E, Page 4	II.E.3.b	<p>With regard to "b", see previous responses regarding MALs and the limitation of the non-stormwater discharge prohibition to the MS4.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.</p>
9	Attachment E, Page 4	II.E.3.c	<p>Regarding "c", as mentioned, non-stormwater discharges cannot be applied to receiving water limitations because they are only prohibited to the MS4, not from or through it.</p> <p><i>Recommended Correction:</i> Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.</p>

10	Attachment E, Page 4	II.E.4	<p>Omit Item 4. Monitoring of Development/Re-development BMPs is the responsibility of the Developers. Requirements for monitoring Developer BMPs should be part of Section VI.D.6. <i>Planning and Land Development Program</i> and the responsibility of the Developer.</p> <p>The purpose of this requirement is not authorized under federal stormwater regulations as it relates to monitoring. Requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. There is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.</p> <p>Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.</p> <p><i>Recommended Correction:</i> Delete this requirement.</p>
11	Attachment E, Page 5	II.E.5	<p>Omit Item 5. The MS4 Permit is to regulate discharges to receiving water. It is the role of the State EPA and Water Quality Control Board, not municipal governments, to conduct Regional Studies for Southern California Monitoring Coalition, bio-assessment and Pyrethroid pesticides. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.</p> <p>Requiring 85 jurisdictions to conduct regional monitoring is duplicative and inefficient and should be conducted by a Regional authority.</p> <p>Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.</p>
12	Attachment E, Pages 5-6	III.F & G	Omit Items F. & G. Specifying Sampling Methods and Analytical Procedures in the permit adds unnecessary liability for Cities for work that is already described in USEPA Protocols and per approved TMDLs. These Items should be combined and state to follow USEPA Protocols or per approved TMDLs.
13	Attachment E, Page 6	III.H.3	There is a typo for Item 3. Item 3. should read "...requirements identified in Part XVIII.A.5. and Part XVIII.A.7 of this MRP."
14	Attachment E, Pages 7-8	IV.C.1	More time is needed to prepare Coordinated Integrated Monitoring Plans due to the number of agencies involved. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules. Revise Item 1. to provide twelve (12) months for each Watershed Group to submit a Memorandum of Understanding to work with other agencies for a Coordinated Integrated Monitoring Plan. A letter of intent allows a Permittee to drop out of the process at any time and 12 months are required to process a Memorandum of Understanding with County and State agencies.
15	Attachment E, Page 8	IV.C.2	Revise Item 2. to require "Each Permittee not participating in a Coordinated Integrated Monitoring Plan to submit an Integrated Monitoring Plan..."
16	Attachment E, Page 8	IV.C.3	Revise to allow participating Permittees 24 months to submit a Coordinated Integrated Monitoring Plan. It will take a minimum of 12 months to process a Memorandum of Understanding with County and State agencies and that agreement is required before any Permittee will award a contract to a consultant to prepare a Coordinated Integrated Monitoring Plan. It takes 3 months to issue Request for Proposals and award a contract and then 9 months for a consultant to prepare a Coordinated Integrated Monitoring Plan. Since existing monitoring programs will proceed as Coordinated Integrated Monitoring Plans are being prepared, then there is no need for accelerated schedules.

17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.
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18	Attachment E, Page 8	IV.C.7	<p>Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP. All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week.</p> <p>Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1.</p> <p>An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons:</p> <ol style="list-style-type: none"> 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage than SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). <p>In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations.</p> <p>For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6).</p> <p>The following is proposed wording modification to Attachment E, Section IV.C.7:</p> <p>"7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s)."</p>
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for "One of the monitoring events shall be during the month with the historically lowest instream flows." This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, "The IMP and/or CIMP plan(s) shall include a map and/or database of the MS4 to include the following information:" GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor "upstream of the actual outfall or downstream of a political boundary". Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit "except aquatic toxicity, which shall be monitored once per year...". This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include "natural flows" or "natural sources" as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, "100% of the outfalls in the inventory within 5 years..."

32	Attachment E, Page 22	IX.F.2	Omit the requirement to report to the Regional Board "within 30 days of determination" because there are too many report submittals that could lead to a Notice of Violation that will have no impact on water quality. Reporting source identifications in the annual report provides central location for submittals.
33	Attachment E, Page 23	IX.G.3 & 4	Outfalls not subject to dry weather TMDLs that have significant dry weather flows should have continuous flow monitoring done for a quarter with water quality sampling done once at the beginning of that time period. If the water quality sampling indicates pollutant concentrations that exceed water quality standards, then the IC/ID investigation procedures should begin. If no water quality standards are exceeded or the IC/ID investigation eliminates the source of pollutants, then that flow has been demonstrated NOT to cause or contribute to pollutant loading and should be stopped. To continue monitoring a site that is known NOT to cause or contribute to pollutant loading is a waste of resources and an un-funded mandate.
34	Attachment E, Page 24	X	This section should be moved to Section VI.D.6.d.iv. for clarity.
35	Attachment E, Page 25	XI	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform Pyrethroid and SCCWRP regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
36	Attachment E, Page 28	XII	Omit this section. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
37	Attachment E, Page 38	XIV.I.1 & 2	It is not reasonable to force Permittees to make changes to approved Monitoring and Reporting Programs based on the whim of an "interested" party or "as deemed necessary by EO". This provides unlimited power to interested parties or EO. Recommend these items be revised to include a caveat that there would be no additional costs or as approved by Regional Board, to make those changes open and transparent.
38	Attachment E, Page 39	XIV.M	Omit section M. as it is redundant to section L.
39	Attachment E, Page 44	XVIII.A.5	Omit Items b. & c. Regional monitoring should be done by County, State and Federal agencies that have jurisdiction over pollutants of concern. It is a waste of municipal resources to have 85 Permittees all perform aquatic toxicity regional studies. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
40	Attachment E, Pages 49-52	XIX.B	Only include schedules for IMP and CIMP for USEPA established TMDLs and revise those schedules to be 9 months for IMP and 24 months for CIMP. Having due dates for Monitoring and Reporting plans for IMP and CIMP past the due date established by the TMDL creates confusion.

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals

LA PERMIT GROUP

*A collaborative effort to negotiate the
Los Angeles County MS4 NPDES Permit*

February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: *LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs*

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However; the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an Integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:

- a. evaluates the current conditions in impaired water bodies (identified by effective TMDLs),*
- b. facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and*
- c. identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4*
- d. promotes the IWMP and provides time schedule incentives.*

The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 2 of 6

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. **Pyrethroid Study**. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. **Hydromodification Study**. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts¹. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. **Low Impact Development Study**. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

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<http://www.sccwrp.org/ResearchAreas/Stormwater/Hydromodification/AssessmentAndManagementOfHydromodification.aspx>

LA Permit Group
 Comments on 1/23/12 LARWQCB Monitoring Program Presentation
 Page 3 of 6

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort.

Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23²) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide 18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:
 - a. Unclear how baseline non-stormwater flows are established.
 - b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).
 - c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

² Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 4 of 6

- d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.
- e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.
- f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.
- g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watershed and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

**LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 5 of 6**

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permittees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health³ or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

³ The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

**LA Permit Group
Comments on 1/23/12 LARWQCB Monitoring Program Presentation
Page 6 of 6**

**LA Permit Group, proposal for
INTEGRATED WATERSHED MONITORING PLANS, cont.**

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLAs, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a “one size fits all” approach.
 - a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:
 - i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
 - ii. Runoff reduction BMPs;
 - iii. Treatment control BMPs where effectiveness information is available;
 - iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
 - v. Research and development for pollutant types where effective BMPs have not been identified.
 - b. These categories will be incorporated as part of the Stormwater Quality Management Plans.
 - c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.
2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:
 - a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
 - b. specific procedures for evaluating BMP effectiveness; and
 - c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

**LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 2 of 4**

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEP given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 3 of 4

“point sources”, which are “consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA.”

2. Define BMP-based WQBELs as “Implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAs, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAs.” This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
 - a. Not submitting the SQMP.
 - b. Not implementing all elements of the SQMP in accordance with the approved schedule.
 - c. Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states “The Permittees shall comply with the following effluent limitations and/or receiving water limitations...” This is followed by tables with the numeric WLAs.

We have three concerns with this language:

1. The language implies that the effluent limitations are strictly numeric.
2. The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
3. The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

**LA Permit Group
Comments on 1/23/12 LARWQCB TMDLs Program Presentation
Page 4 of 4**

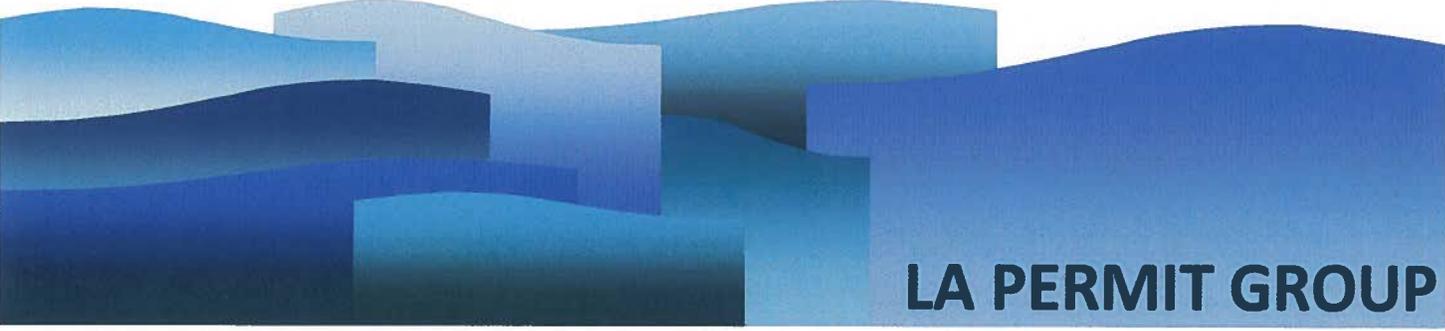
We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.



LA PERMIT GROUP

May 14, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant, additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provided stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the working proposals and the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose to develop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAs, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAs.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAs solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)¹), State Board orders (Order

¹ See also California Regional Water Quality Control Board San Diego Region - Fact Sheet / Technical Report For Order No. R9-2010-0016 / NPDES NO. CAS0108766.

WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)² have affirmed that WLAs can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES permits³. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has **discretion** in how the WLAs are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible⁴.

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAs in this permit.** The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAs are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

² "[i]t is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits. This is not to say that a wasteload allocation will result in numeric effluent limitations for municipal storm water dischargers. Whether future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided on the regional water quality control board's findings *supporting either the numeric or non-numeric* effluent limitations contained in the permit." (Order WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10 (emphasis added).)

³ U.S. EPA, *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, Memorandum from U.S. EPA Director, Office of Wastewater Management James A. Hanlon and U.S. EPA Director, Office of Wetlands, Oceans, and Watershed Denise Keehner (Nov. 10, 2010).

⁴ Storm Water Panel Recommendations to the California State Water Resources Control Board "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities. June 19, 2006.

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*⁵ (NRDC v. County of LA) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOV's as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

⁵ No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

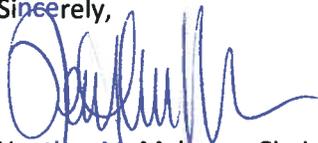
Beyond the legal/liability aspect of the receiving water limitations we would submit that in a practical sense the RWL works against the Watershed Management Program proposal. On the one hand the municipalities will develop watershed management programs that are based on the high priority water quality issues within the watershed. Consistent with the working proposal for the watershed management programs we would expect the focus to be on TMDLs and the pollutants associated with those TMDLs. However, under the current RWL working proposal the municipality will need to direct their resources to any and all pollutants that may cause or contribute to exceedances of water quality standards. Based on a review of other municipal outfall monitoring results in the State there may be occasional exceedances of other non-TMDL pollutants (e.g. aluminum, iron, etc.). These exceedances may only occur once every 10 storms but according to the current RWL proposal, the municipalities must also address these exceedances with the same priority as the TMDL pollutants. The LA Permit Group views this as unreasonable and ineffective use of limited municipal resources.

The RWL language is a critical issue for municipalities statewide and has been highlighted to the State Water Resources Control Board for consideration. Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue.

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectfully request that that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Document Name: TMDL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference Page	Section	Comments	Rvwr (optional)	Author Response
1	5	B.1.c.(2)	Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.		
1	5	B.1.c.(2)	Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.		
1	5	B.1.c.(2)	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		

2		B.1.	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to "daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.		
3		B.1.	The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.		
4	5	B.1.c.(3)	Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".		
5	1-6	B.1 throughout	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".		

6	5	B.1.c(3)	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.		
7	6-7	B.2.	Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.		
8	7	B.3.	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]		
8	7	B.3.	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.		

9	7	B.3	<p>Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.</p>		
10	3	C.2.c)	<p>The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.</p>		

11	3	C.2.c)	<p>The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.</p>		
12	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.</p>		
13	3	C.2.c)	<p>The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.</p>		

14	3	C.3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		
15	4	C.5.a)	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.		
16	4-8	C.5.	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		
17	1, 3, 15	Attach I	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		
18	2	E.2.b.v.1.	Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."		

19	3	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."		
20	4	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.		
21	8	E.5.b.(c)	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.		
22	7	E.5.a.i-x	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?		
23	2	E.2.b.ii	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		
24	2	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.		

26	3	E.2.c.iii	For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopener purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.		
28	5	E.4.a	This provision states "A Permittee shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.		
29	12-13	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.		
30	7	E.5	Please clarify that cities are not responsible for retrofitting.		
31	4	E. 2. e	Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.		

32	4	E.3	Instead of TSO, please include mechanisms that allow for time to complete Basin Plan Amendments for EPA Established TMDLs. This will protect cities from unnecessary vulnerability and allow for these TMDLs to be incorporated into the Watershed Management Programs. Incorporate permit language that will reopen the LA MS4 upon completion of the Basin Plan Amendments necessary for coordination with these programs.		
33	Santa Clara River	A. 4 c)	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.		
34		1 E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
35			Santa Ana River TMDLs should be removed; this TMDL is eliminated		
36	9	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institutional controls will supplement full and partial capture to attain a determination of "zero" discharge.		
37	10	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.		
38	1 of 19	B	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.		
39	3 of 24	3.a)1	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.		
40	6 of 24	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.		
41	1 of 9	1.b	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.		
42	1 of 9	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to be apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations.		

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations-- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Document Name: Watershed Management Program Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

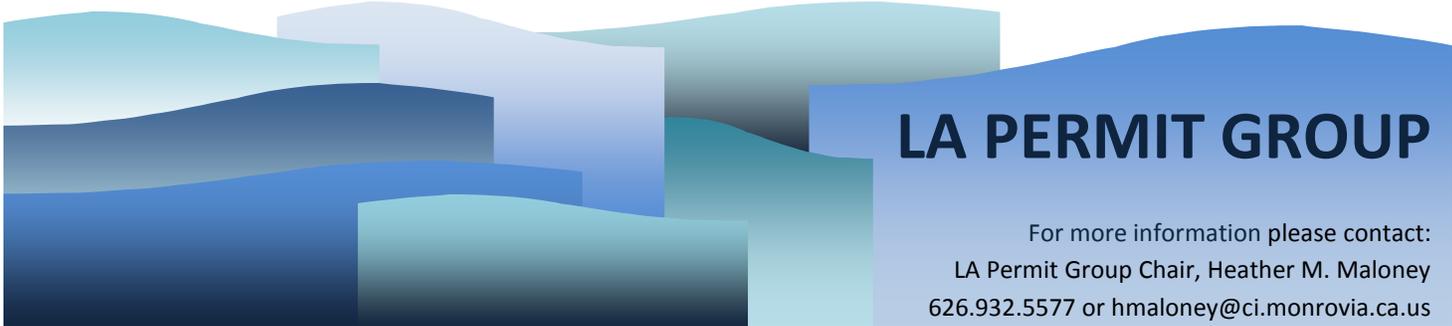
Comment		Doc. Reference		Comments	Rvwr (optional)	Author Response
No.	Page	Section				
1	4	(4)		Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		
2	2, 11, 13	various		The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shall implement modifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		
3	2, 3	Table and C.2.a - d		Please allow 24 months for development of the Watershed Management Program to provide sufficient time for calibration and the political process to adopt these programs		
4	4	C.3.a.iii		Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
5	9	(5)		Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibility		
6	2	C.2		Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the interim 18 month period while developing the Watershed Management Program and securing approval of those programs		

7	9	(4)(c)	<p>While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than than number.</p>		
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Document Name: RWL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference		Comments	Rvwr (optional)	Author Response
	Page	Section			
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		



LA PERMIT GROUP

For more information please contact:
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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan.. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or pursue a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors¹. This constraint, as well as USEPA position² that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based “customized” programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State’s Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State’s General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

¹ See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.

² See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupportable. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

“MCMs for ID/IC”

The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program be the basis for the “non-stormwater outfall based monitoring program” and both should be identified in an Integrated Watershed Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges.

Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

**LOS ANGELES PERMIT GROUP COMMENTS
 MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
 LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
General			
1	2	C.1.c	<p>The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used:</p> <p><i>“Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p><i>“New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.</i></p> <p><i>“Redevelopment” means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.</i></p> <p>The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.</p>
Legal Authority			
2	4	2.a.i	<p>Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites."</p> <p>It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

3	4	2.a.vii	<p>Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees."</p> <p>The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).</p>
4	4	2.a.xi	<p>Staff proposal states: "Require that structural BMPs are properly operated and maintained."</p> <p>MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.</p>
5	5	2.a.xii	<p>Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4."</p> <p>It is difficult, if not impossible; to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.</p>
Fiscal Resources			
6	5	3	<p>The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

7	5	3.a	<p>Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order"</p> <p>This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?</p>
Public Information and Participation Program			
8	6	6.a.iii	<p>Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences..."</p> <p>Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.</p>
9	7	6.d.i.2.b	<p>Staff proposal states: "... including personal care products and pharmaceuticals)"</p> <p>The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.</p>
10	8	6.d.i.3	<p>The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?</p>
Industrial/Commercial Facilities Program			
11	10	7.b.i.4	<p>Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL..."</p> <p>As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICSs/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

12	10	7.b.ii.6	<p>Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility"</p> <p>Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."</p>
13	11	7.d-f	<p>These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.</p>
14	17	7.e.i	<p>Staff proposal states: "...in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs..." Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.</p>
15	17	7.e.i	<p>Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.</p>
Development Planning			
16	21	8.b.1	<p>This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.</p>
17	21	8.b.i.1.g	<p>Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.</p>
18	21	8.b.i.1.g	<p>The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.</p>
19	21	8.b.i.1.g	<p>Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

20	21	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	24	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)k)-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i(1) statement.
22	24	8.c.i.2	The SWQDv definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "... designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDv) defined as the runoff from all impervious surfaces that are generated by a:..."
23	24	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	24	8.c.i.5	Please define the term "wet-weather season".
25	24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	24	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscaping within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26	Table	The table provided lacks clarity and the use of M_v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26	Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	28	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDv will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the “peak flow control” requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E_p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

41	40	8.d.iv.b	This requirement should be limited to the sites already visited as part of the “critical sources” program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.
Development Construction			
42	41	9.d	Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.
43	41	9.e.1.i	Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.
44	42-43	9.f.ii	The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.
45	43	9.f.ii.3.i	An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.
46	43	9.f.ii.4	The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.
47	43	9.f.ii.5	The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permittees without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permittees are not made responsible parties for this activity.
48	43	9.f.ii.8	The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.
49	43-44	9.g.i	The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement.
53	48	9.h.ii.2	The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	50	9.h.ii.5.b	The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans." the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are install properly, and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

57	54	10.d	<p>Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards."</p> <p>This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.</p>
58	56	10.d.v	<p>Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.</p>
59	56	10.e.ii	<p>Staff proposal states: "Each Permittee shall implement the following measures for flood management projects"</p> <p>Flood management projects need to be clearly defined.</p>
60	60	10.g.ii.7	<p>Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters..."</p> <p>The method which a pesticide that causes "impairment" to waterbodies needs to be defined.</p>
61	62	10.h.iv.1.c	<p>Staff proposal states: "Provide clean out of catch basins... 24 hours after event"</p> <p>Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."</p>
62	63	10.h.vii.1	<p>This requirement appears to be an "end-run" around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.</p>
63	64	10.h.ix	<p>Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance...."</p> <p>The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.</p>

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do “non-stormwater outfall-based monitoring program” as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a “non-stormwater outfall-based monitoring program”. Please revise each mention of “ <i>Each Permittee</i> ” to “Permittee/Permittees” to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving waterbody monitoring in-lieu of outfall monitoring.
65	-	11	A definition of “outfall” is required for clarity. An “outfall” for purposes of “non-stormwater outfall-based monitoring program” should be defined as “major outfall” pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of “ <i>outfall</i> ” to read “major outfall” when discussing “non-stormwater outfall-based monitoring program”.
66	68	11.a	Some small cities do not have digital maps. In the “General” category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, “ <i>Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time.</i> ” This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on “As-Built” drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. “The contributing drainage area for each outfall should be clearly discernable...” The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read “The name of all receiving water bodies from those MS4 major outfalls identified in (1).”
69	69	11.c.i	The LA Permit Group proposes “non-stormwater outfall-based monitoring program” to be flow based monitoring. Please revise item (4) of 11., c. i. to read “(4) monitoring flow of unidentified or authorized non-stormwater discharges, and...”
70	69	11.c.i.4	“Monitoring of unknown or authorized discharges” “Authorized” discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to “Permittee/Permittees shall develop written procedures for conducting investigations to identify the source of suspected illicit discharges, including procedures to eliminate the discharge once source is located.” It is not know if a discharge is illicit until the investigation is completed.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

72	70	11.d.ii	Please revise the proposed language to “At a minimum, each Permittee/Permittees shall initiate an investigation(s) to identify and locate the source within 48 hours of becoming aware of the suspected illicit discharge.” Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	“Illicit discharges suspected of sanitary sewage... shall be investigated first.” ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the “most toxic or severe threat to the watershed” shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to “If the source of the discharge is found to be authorized under a NPDES permit...” If the discharge is permitted, then it is not “illicit”.
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to “If the source of the illicit discharge has been determined to originate within a Permittee’s jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification.” “Non-stormwater” discharges do not equate to “illicit” discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to “If the source of the suspected illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall...” Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	<p>Please revise the proposed language <i>“the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.”</i> To “the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board.”</p> <p>In the case that an Illicit Discharge is ongoing, then the discharger can be identified and the responsibility to clean up and eliminate the discharge lies with the discharger. Any illicit discharge for which the Permittee has exhausted their Progressive Enforcement Policy should be deferred to the Regional Water Quality Control Board for additional Progressive Enforcement or permitting.</p>
78	71	11.e.i	Please revise the first sentence to “Permittee/Permittees, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days...” The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the “days of completion” from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

**LOS ANGELES PERMIT GROUP COMMENTS
STAFF WORKING PROPOSAL - MINIMUM CONTROL MEASURES
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

80	71	11.f.i	Revise the proposed first sentence to “Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point...” It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71 & 72	11.f.ii.1&2	Revise “PIPP” to “Hotline”. The subject of this item is “reporting hotline requirements”.
82	72	11.f.iii	Omit this section. “No Dumping” signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, “The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee.” This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to “Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority.” Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bioretention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	<p>RB staff proposed language requires the permittees to “effectively prohibit non-stormwater discharges into the MS4 and from the MS4 to receiving waters” except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6.</p> <p>This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges to the MS4 but not from the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as “a discharge to the MS4 that is not composed entirely of stormwater”. In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990¹, USEPA states that:</p> <p style="text-align: center;"><i>Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.</i></p> <p>This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges²:</p> <p style="text-align: center;"><i>“Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water</i></p>

¹ 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

² 55 FR 47990-01 VI.G.2. Effective Prohibition on Non-Stormwater Discharges

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
			<p><i>discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"</i></p> <p>The rulemaking goes on to say that the permit application:</p> <p><i>"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."</i></p> <p>Nowhere in the rulemaking is the subject of prohibiting discharges <i>from</i> the MS4 discussed.</p> <p>Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows:</p> <p><i>No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.</i></p> <p>Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.</p>
2	3	III.A.3.b	<p>This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.</p>

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
			We'd suggest that Table "X" be revised to include specific sections in Part V or VI.D that may modify the exempt determination. We'd respectfully request that, based on the Executive Officer's determination of a problem, a reopener clause is added so the Permit may be amended to account for changes exempt/conditionally exempt status.
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

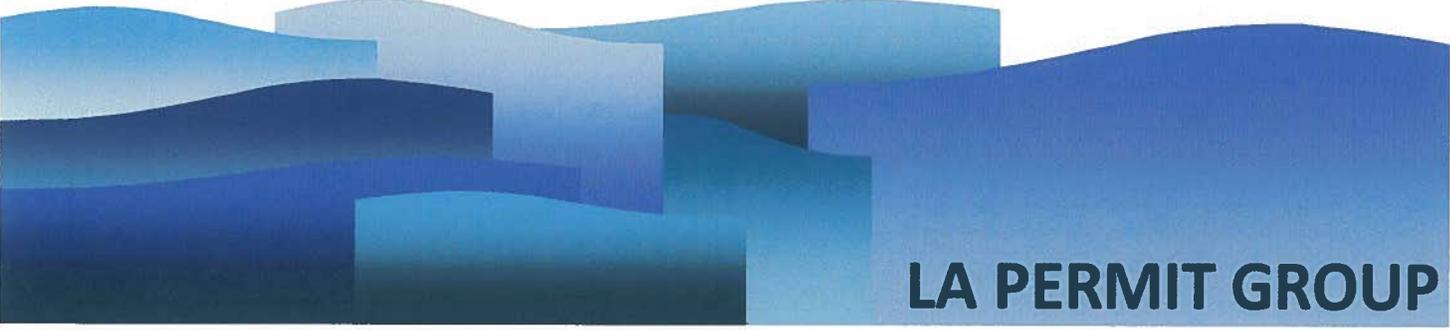
No.	Page	Citation	Comment
			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

**LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT**

No.	Page	Citation	Comment
15	Table X	General	Enforcing NPDES permits issued for the various NSWDS referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWDS category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period



LA PERMIT GROUP

July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

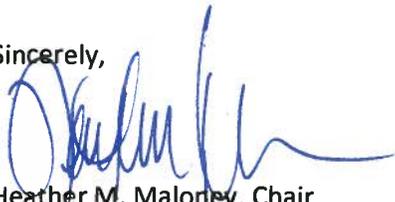
Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,



Heather M. Maloney, Chair
LA Permit Group

cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfield, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit



June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal’s decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court’s opinion addressed two key issues for California’s MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the “iterative process.”

However, contrary to the State Water Board’s stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge “causes or contributes” to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court’s decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees’ control, and that instead an adaptive program over a span of several years or longer is necessary.

Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board’s program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the “shall not cause or contribute” receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

CASQA comments on Caltrans MS4 Permit Second Revised Draft Tentative Order

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive, flowing style.

Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision



California Stormwater Quality Association[®]

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.