

Limited Re-opener of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit to Incorporate Provisions to Implement the Los Angeles River Watershed Trash TMDL.

Table of Contents

| | |
|--|------|
| 1. Executive Summary | 14-1 |
| 2. Tentative Findings | 14-2 |
| 3. Tentative Permit Provisions (Parts 4, 5 and 7) | 14-3 |
| 4. Fact Sheet | 14-4 |
| 5. Comment Letters from July 29, 2009 Public Workshop | 14-5 |
| 6. Comment Letters on October 8, 2009 Public Notice of Permit Modification | 14-6 |
| 7. Response to Comments on July 29, 2009 Public Workshop | 14-7 |
| 8. Response to Comments on October 8, 2009 Public Notice Documents | 14-8 |

ADDITIONAL MATERIAL TO BE INCLUDED IN THE
AGENDA PACKAGE

ITEM: 14

SUBJECT: Limited Re-opener of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit to Incorporate Provisions to Implement the Los Angeles River Watershed Trash TMDL

FROM: Renee Purdy PHONE: 213-576-6722

DATE: December 3, 2009

BOARD MEETING DATE: December 10, 2009

Please add the following Change Sheet behind Table of Contents for Item 14.

TO: X ALL BOARD MEMBERS
 STEVE BLOIS
 FRANCINE DIAMOND
 MADELYN GLICKFIELD
 JEANETTE LOMBARDO
 MARY ANN LUTZ
 MARIA MEHRANIAN
 X MICHAEL LEVY
 X JENNIFER FORDYCE

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**Change Sheet for Item 14:
 Limited Re-opener of the Los Angeles County Municipal Separate Storm Sewer System (MS4)
 Permit to Incorporate Provisions to Implement the Los Angeles River Watershed Trash TMDL
 December 3, 2009**

| Change | Page | Location | Action | Added or Deleted Text (additions are underlined, deletions are strikeout) | Reason for Change |
|--------|-----------|---|---------|--|--|
| 1 | 14- 20 | Permit Provisions, Part 7.1(B)(3) | Replace | <p>Delete subparagraph (3):</p> <p>Any Permittee that establishes that it lacks authority over the MS4 physical infrastructure because it is under the authority of the Los Angeles County Flood Control District shall be held jointly and severally liable with the Flood Control District for violations of the interim or final effluent limitations assigned to that jurisdiction unless the Permittee and the Flood Control District submit a duly executed agreement (the terms of which has been approved by the Executive Officer to ensure it is consistent with the requirements of this Order) that allocates between them all responsibility for compliance with these provisions, and further provided that the Permittee is in compliance with its respective obligations under the agreement.</p> | <p>In response to comments made by the Los Angeles County Flood Control District. The revised text clarifies and limits the circumstances under which the District may be held jointly and severally liable with a Permittee for violations of the effluent limitations in Appendix 7-1.</p> |

Change Sheet – Item 14
 Limited Re-opener of the LA County MS4 Permit

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| | | | | <p>Replace subparagraph (3) in its entirety with the following:</p> <p><u>Each Permittee shall be held liable for violations of the interim or final effluent limitations assigned to its jurisdiction. Any Permittee whose compliance strategy includes full or partial capture devices, that demonstrates that it has failed to comply with the effluent limitations in Appendix 7-1 because the Los Angeles County Flood Control District (District) has without good cause denied entitlements or other necessary authority for the timely installation and/or maintenance of such devices in parts of the MS4 physical infrastructure that are under the authority of the District, may be held jointly and severally liable with the District for violations of the interim or final effluent limitations assigned to that jurisdiction. The District's liability, however, shall be limited to violations related to the drainage areas within the jurisdiction where the District has authority over the relevant portions of the MS4 physical infrastructure. In</u></p> | |

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| 2 | 14-360 to 14-362 | Responsiveness Summary, Response to Comment No. 9.2 | Replace | <p><u>determining whether the District's action was without good cause, the burden shall be on the Permittee making the claim, and the Regional Board will consider the mission and responsibilities of the District, and any reasons the District may present for its decision.</u> <u>Nothing in this Order, or a determination as to good cause in an order to enforce the terms of this Order, shall affect the right of either the District or the jurisdiction to seek indemnity or other recourse from the other as they deem appropriate.</u></p> | <p>Upon further consideration, Regional Board staff developed revised language in response to a comment by the Los Angeles County Flood Control District (see Change #1 above). The revision to the Responsiveness Summary clarifies the Board's response to the District's comment and identifies the revision that has been made to the proposed permit provision at Part 7.1(B)(3).</p> |

Change Sheet – Item 14
 Limited Re-opener of the LA County MS4 Permit

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| | | | | <p>Watershed. The MS4 permit was adopted following the filing of a report of waste discharge (ROWD), by the Los Angeles County Director of Public Works, on behalf of the “Los Angeles County Flood Control District, Los Angeles County, and the [83] incorporated cities.” The ROWD proposed, and the MS4 permit therefore designates, the Flood Control District as the Principal Permittee. The Principal Permittee is expressly charged under the permit with the responsibility for coordinating and facilitating activities necessary to comply with the requirements of the permit and acting as liaison between the other Permittees and the Regional Board on permitting issues. The principal Permittee is also obligated to comply with the provisions of the permit that generally apply to the other Permittees as well (including implementing the SQMP within its jurisdiction). These are spelled out generally, inter alia, in Part 3, paragraphs D and E, respectively. Furthermore, the provisions of paragraph G require all Permittees to possess adequate</p> | |

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| | | | | <p>legal authority to implement the requirements of the permit, including prohibiting litter from being discharged into the MS4 and to require the use of BMPs to prevent or reduce the discharge of pollutants to the MS4. The Clean Water Act and Porter Cologne Act place responsibility on the Flood Control District (the owner/operator) for discharges from its MS4 (a point source). The Co-Permittees are also responsible to the extent they control or discharge to portions of the MS4.</p> <p><u>Under these circumstances, it is not the responsibility of the Regional Board to determine which Permittees have legal authority over parts of the MS4 physically within their jurisdictions versus the Flood Control District. That responsibility properly rests with the Flood Control District and the other Co-Permittees. Neither is it the responsibility of the Regional Board to mediate who should perform upgrades to the MS4 infrastructure as between independent governing bodies with complementary or overlapping authority within the same</u></p> | |

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| | | | | <p>jurisdictional area (i.e., the District versus specific Permittees in whose jurisdictional boundaries District controlled portions of the MS4 are situated). Where responsibility over the MS4 infrastructure has not been made apparent to the Regional Board, the joint owners/operators/dischargers may appropriately be held jointly and severally liable by the Regional Board for the violations of the effluent limitations. Nevertheless, both the Permittee and the District have the right to seek indemnity or contribution from the other in a separate proceeding as they deem appropriate.</p> <p>Since the trash that is the subject of the TMDL emanates from the jurisdiction and the relevant portions of the MS4 are physically within the geographic boundaries of the jurisdiction, the proposed permit provisions require non-District Co-Permittees to control discharges of trash from their jurisdictional areas to the MS4, as required by the TMDL. As noted in the draft permit provisions and accompanying documents, Co-Permittees have a variety of</p> | |

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| | | | | <p><u>options for controlling these discharges, which can be broadly classified as full capture, partial capture, and institutional controls.</u></p> <p><u>In its capacity as the Principal Permittee, however, and the owner/operator of significant portions of the MS4, including 120,000 catch basins throughout Los Angeles County, the District also has an obligation to facilitate activities necessary to comply with the requirements of the permit, which may include the timely installation and maintenance of trash control devices (i.e. certified full capture systems or partial capture devices) in District-owned catch basins within a Co-Permittee's jurisdiction.</u></p> <p><u>In response to the District's comments and in view of subsequent communications between District and Regional Board staff, staff has proposed modifying the language of Part 7.1.B(4) to better account for the District's legal obligations, both as Principal Permittee and as the Flood Control District. Therefore, Part</u></p> | |

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| | | | | <p><u>7.1.B(4) has been modified to require a showing by a Co-Permittee that the District has inappropriately prevented the Co-Permittee from undertaking activities to comply with the permit provisions. Specifically, Co-Permittee must show that the District has denied, without good cause, entitlements or other necessary authority requested by a Co-Permittee to facilitate the timely installation and/or maintenance of such devices in parts of the MS4 physical infrastructure that are under the authority of the District, before the District may be held jointly and severally liable for violations of the effluent limitations assigned to that Permittee. The District's liability, however, would be limited to violations related to the drainage areas within the jurisdiction where the District has authority over the relevant portions of the MS4 physical infrastructure. The proposed language also expressly preserves the District's and Co-Permittees' rights to seek indemnity.</u></p> <p>Under the circumstances outlined above, it is not the responsibility of the Regional Board to</p> | |

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| | | | | <p>determine which Permittees have legal authority over parts of the MS4 physically within their jurisdictions versus the Flood Control District. Clarifying that relationship is properly the responsibility of the principal Permittee and the other Permittees. Accordingly, the permit modifications expressly place that responsibility upon the Permittees, and the permit language expressly assigns responsibility to the Flood Control District and the relevant Permittees in accordance with any agreement that they present to the Regional Board that allocates the full range of responsibility for compliance. Lacking such an agreement, and mechanism to determine individual Permittees' jurisdiction, the Regional Board may appropriately hold them jointly and severally liable, and allow them to subsequently determine for themselves how to reallocate that liability, either by agreement or an action in indemnity.</p> <p>Nevertheless, in lieu of the agreement proposed in the draft permit, the Flood Control</p> | |

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| | | | | <p>District has been invited to propose alternative provisions for staff consideration, provided the provisions ensure that there is complete responsibility allocated to the Permittee or the District or both of them for compliance with and authority to comply with the permit provisions, without a need on the part of the Regional Board to determine who has what authority as between them should an enforcement proceeding be necessary.</p> | |

**Executive Summary
California Regional Water Quality Control Board
Los Angeles Region
December 10, 2009
532nd Board Meeting**

Item Number 14

Proposed Board Action

Revise the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (NPDES No. CAS004001) to incorporate effluent limitations and related provisions consistent with the assumptions and requirements of the Los Angeles River Watershed Trash TMDL, including the wasteload allocations (WLAs), for the control of trash discharges from jurisdictions within the Los Angeles River Watershed.

Need for Action

Trash in waterways causes significant water quality problems. Small and large floatables inhibit the growth of aquatic vegetation, decreasing habitat and spawning areas for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items, settleables are not always obvious to the eye. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, keeping visitors away and degrading coastal waters.

Trash is a serious and pervasive water quality problem in the Los Angeles River Watershed. In 1996, the Regional Board determined that levels of trash in the Los Angeles River system exceeded the water quality objectives necessary to protect the beneficial uses of the river, which are contained in the Region's *Water Quality Control Plan* (Basin Plan), and as a result, in 1998, listed the Los Angeles River and various tributaries and lakes within the watershed on the Clean Water Act section 303(d) list of impaired waters.

To address these trash impairments, the Regional Board initially adopted an amendment to the Basin Plan in 2001, incorporating a TMDL for Trash in the Los Angeles River Watershed, and re-adopted the TMDL in 2007 (Resolution R07-012). Both were developed to attain narrative water quality objectives that require:

"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;" and "Waters shall not contain suspended or settleable material in concentrations that

cause nuisance or adversely affect beneficial uses.”

Beneficial uses of the Los Angeles River, its tributaries and lakes that are impaired by trash include contact recreation (REC-1) and non-contact recreation (REC-2); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR); spawning, reproduction and early development of fish (SPWN); commercial and sport fishing (COMM); shellfish harvesting (SHELL); and wetland habitat (WET).

To this day, thousands of tons of trash are discharged through the Los Angeles River system to downstream beaches and the ocean. Since much of the trash carried down the Los Angeles River ends up at the river's mouth in Long Beach, the City of Long Beach is burdened with the collection and disposal of a large portion of these discharges. Clean up efforts by environmental organizations such as Friends of the Los Angeles River (FOLAR) and Heal the Bay also yield significant amounts of trash within in a limited time period. For example, this year L.A. River CleanUp, organized by FOLAR, and conducted on two separate days in the spring, resulted in a total of 37,292 lbs. of trash and 483 lbs. of recyclable material being removed from the Los Angeles River.

The TMDL states that the primary regulatory mechanism for implementing the TMDL will be the Los Angeles County MS4 Permit. Compliance with the interim WLAs was required beginning in September 2008. The proposed changes to the Los Angeles County MS4 Permit are necessary at this time to formally implement the WLAs established in the Los Angeles River Watershed Trash TMDL through enforceable permit provisions to ensure the protection of beneficial uses according to state and federal requirements.

Background

Los Angeles County MS4 Permit History

In 1990, the Regional Board adopted Order No. 90-079, the first Los Angeles County MS4 Permit. The Los Angeles County MS4 Permit was issued on a system-wide basis due to the highly interconnected storm drain system. The 1990 permit required the Los Angeles County Flood Control District, the County of Los Angeles, Caltrans, and the incorporated cities in Los Angeles County to implement storm water pollution controls including amending ordinances and optimizing existing pollutant controls such as street sweeping, construction site controls, and others. The Regional Board required all Permittees to implement a minimum list of 13 BMPs for consistency across the County.

On July 15, 1996, the Regional Board adopted Order No. 96-054

that revised the 1990 MS4 Permit. The 1996 Los Angeles County MS4 Permit required model programs be developed and implemented by the Permittees for Public Information and Public Participation, Industrial/Commercial Activities, Development Construction, Illicit Connections and Illicit Discharges, Public Agency Activities, and Development Planning. These model programs were intended to be dynamic and expected to change with time, as more information on storm water impacts became available.

On January 31, 2001, the Los Angeles County Department of Public Works submitted an application for renewal of their MS4 permit in the form of a Report of Waste Discharge (ROWD) for Los Angeles County and the incorporated cities, except for the City of Long Beach. On December 13, 2001, the Los Angeles County MS4 Permit was reissued (Order No. 01-182) and is currently in the 8th year of the third permit term. On June 12, 2006 Regional Board staff received four separate ROWDs from LA Permittees to renew the Los Angeles County MS4 Permit.

On September 14, 2006, the Los Angeles County MS4 Permit was amended by Order No. R4-2006-0074 and on August 9, 2007 it was amended again by Order No. R4-2007-0042 to incorporate the summer dry weather WLAs of the Santa Monica Bay Beaches and Marina del Rey Harbor Bacteria TMDLs. Pursuant to 40 CFR 122.6, Order 01-182 as amended remains in effect and enforceable through an administrative extension until a replacement Los Angeles County MS4 Permit is adopted by the Regional Board.

Los Angeles River Watershed Trash TMDL History

The Los Angeles River Watershed Trash TMDL was originally adopted by the Regional Board on September 19, 2001 and approved by US EPA on August 1, 2002. However, this TMDL was set aside on June 8, 2006 as a result of an appellate court ruling on a suit filed by twenty-two cities in the Los Angeles River Watershed,¹ which rendered the Trash TMDL invalid solely on the basis of inadequate CEQA analysis. The CEQA issues were addressed in a thorough environmental impact analysis of TMDL program and project alternatives as part of the current trash TMDL, which was adopted by the Regional Board on August 9, 2007, and eventually approved by US EPA on July 24, 2008.

Stakeholder Participation

Regional Board staff held a workshop on July 29, 2009, to inform Permittees and other interested persons regarding the incorporation of the Los Angeles River Watershed Trash TMDL

¹ The cities were members of the group, "The Coalition for Practical Regulation", and included Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier.

into the LA MS4 Permit. Comments were solicited during this workshop and the two weeks following. These comments were considered by staff in formulating the draft permit modifications.

The Hearing Notice regarding the Regional Board's proceedings to incorporate the Los Angeles River Watershed Trash TMDL's WLAs into the Los Angeles County MS4 Permit was circulated on October 8, 2009 along with the draft permit modifications, findings and a supporting fact sheet. A 30-day period was provided to interested parties to review and comment on the proposed findings and permit provisions. Staff has prepared responses to the workshop comments and all comments received during the October 8 to November 9 public comment period, which are included herein. The Regional Board Hearing on this matter, on December 10, 2009, provides further opportunity for stakeholders to comment.

Summary of Commenters

Regional Board staff received 29 comment letters from the July 29, 2009 workshop. Comments were submitted by 21 Los Angeles County MS4 Permittees, 2 Non-governmental organizations, and 4 entities representing the interests of some of the Los Angeles County MS4 Permittees. Regional Board staff received 14 comment letters during the 30-day comment period on the proposed modifications to the Los Angeles County MS4 Permit. Comments were submitted by 9 Los Angeles County MS4 Permittees, 1 Non-governmental organization, 3 entities representing the interests of some of the Los Angeles County MS4 Permittees, and one private citizen.

Significant Issues

Several significant issues were identified during staff's review of the comment letters. These are summarized below. Detailed responses to all comments received from the public workshop and during the public comment period are provided in two "Response to Comment" documents.

Issue: WLAs should not be expressed in the permit as numeric effluent limitations, but as a requirement to implement trash BMPs in an iterative manner.

Response: Regional Board staff are of the opinion that referencing BMP implementation alone as the expression of the TMDL's WLAs in the permit would be contrary to federal regulations, which require NPDES permits to contain effluent limits and conditions consistent with the requirements and assumptions of available WLAs (40 CFR 122.44(d)(1)(vii)(B)). The proposed permit provisions do provide for alternative means of demonstrating compliance with the effluent limitations derived from the WLAs, either through the installation of deemed-compliant, certified full capture systems or estimation of reductions in trash discharges in areas serviced by partial capture devices and/or institutional controls. Therefore no

changes to how the WLAs are expressed in the permit provisions are proposed.

Issue: The Regional Board should reissue the Los Angeles County MS4 Permit and wait to incorporate the Trash TMDL requirements during the Permit's reissuance.

Response: Compliance with certain provisions of the TMDL, including WLAs, is required prior to the time that the Los Angeles County MS4 Permit can be reissued. The only way to ensure timely compliance is to incorporate the WLAs into the Permit. Therefore, reopening the existing permit during its administrative extension is the most expedient path to effectively implementing the TMDL.

Issue: The Clean Water Act's prohibition on antibacksliding might be construed to prohibit the Regional Board from implementing, in the future, effluent limitations less stringent than those proposed if, when the TMDL is reviewed and reconsidered, the Regional Board finds that less stringent effluent limitations are warranted.

Response: Any revised WLAs established during the reconsideration of the Los Angeles River Watershed Trash TMDL would have to be set to achieve the applicable water quality standards, as required by federal law; therefore, any revised effluent limitations based on the revised WLAs, even if less stringent, would be permitted under the antibacksliding provisions.

Stakeholders also suggested minor changes to the proposed Permit provisions to provide additional clarity regarding implementation and compliance determination. Clarifications have been provided where necessary.

Where revisions have been made in response to comments, the location and nature of the change is noted in the "Response to Comments" documents.

Alternatives

a. No Action Option – The Los Angeles River Watershed Trash TMDL required compliance with the interim WLAs beginning in September 2008. The MS4 Permit was identified in the TMDL as the primary mechanism for implementing the WLAs. The Regional Board is obligated by federal regulation (40 CFR 122.44(d)) to ensure that NPDES permits are consistent with the assumptions and requirements of any available wasteload allocation, and by state law to ensure that the provisions of the Basin Plan, including TMDLs, are implemented in waste discharge requirements (WDRs) (Cal. Wat. Code § 13263). Failing to incorporate the wasteload allocations into the permit at this time would be contrary to the federal goal of making surface

waters 'fishable and swimmable' and the legislative intent of the Porter-Cologne Water Quality Control Act to attain the highest water quality that is reasonable. Taking no action would also be inconsistent with State Board Order WQ 2009-008, which declared, "[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."

b. MS4 Storm Water Quality Management Program (SQMP) – A MS4 Permittee's SQMP is its primary documentation for utilizing the iterative adaptive approach using BMPs or other methods to manage the quality of storm water discharges in order to comply with receiving water limitations. MS4 Permittees in the Los Angeles River Watershed have had nearly two decades to effectively implement provisions of the permit to control trash discharges. The fact that discharges of trash from the MS4 to the Los Angeles River and its tributaries still cause exceedances of water quality standards and impair beneficial uses demonstrates the need for greater action and timely enforcement of the WLAs. The existing approach in the permit lacks enforceable, measurable milestones and would therefore be inconsistent with the provisions and intent of the TMDL.

c. Incorporate TMDL Provisions at Permit Reissuance – Waiting until permit reissuance would prevent full implementation of the TMDL's regulatory requirements for several years after compliance is required. This would be inconsistent with State Board Order WQ 2009-008, which affirmed that TMDLs should not be an "academic exercise" and that they should be given substantive effect, concluding that, by doing so, MS4 permits will be more effective in improving water quality.

d. (Proposed Alternative) Limited Reopener to Incorporate WLAs as Numeric Effluent Limitations with Alternative Compliance Approaches – Regional Board staff is of the opinion that the incorporation of WLAs as numeric effluent limitations with alternative compliance approaches, including implementation of certified full capture systems, is the most appropriate approach given the nature of the TMDL. This approach is consistent with the assumption and requirements of the WLAs of Los Angeles River Watershed Trash TMDL and fulfills federal and state requirements. It is also in step with State Board's recent decision, in which it concluded that TMDLs should not be academic exercises, but should be given substantive effect, and that the regional boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of either numeric or non-numeric effluent limitations (Order WQ 2009-0008).

Recommendation

Staff recommends amending Parts 4 and 5 of the Los Angeles County MS4 Permit, as proposed, and adding a new Part 7. Total Maximum Daily Load Provisions, as proposed, to incorporate provisions, including numeric effluent limitations, consistent with the assumptions and requirements of the LA River Watershed Trash WLAs. This approach, which allows iterative yet enforceable compliance over a specific period of time, is most appropriate to finally remedy the trash impairments in the Los Angeles River Watershed and achieve water quality standards in order to fully protect beneficial uses.

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Findings

Section E. Federal, State, and Regional Regulations

Revisions: (Replace Finding 14 with the revised Finding 14 below)

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River Watershed (Resolution No. R01-013) and Ballona Creek Watershed (Resolution No. R01-014). The amendments were subsequently approved by the State Board, the Office of Administrative Law, and the United States Environmental Protection Agency. Twenty-two cities¹ ("Cities") sued the Regional Board and State Board to set aside the Los Angeles River Trash TMDL. The trial court entered an order deciding some claims in favor of the Water Boards and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the Water Boards, except with respect to California Environmental Quality Act (CEQA) compliance (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). The Court therefore declared the Los Angeles River Trash TMDL void, and issued a writ of mandate that ordered the Water Boards to set aside and not implement the TMDL, until it had been brought into compliance with CEQA. As a result of the appellate court's decision, in 2006, the Regional Board set aside its 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). After conducting the required CEQA analysis, the Regional Board readopted the Los Angeles River Watershed Trash TMDL on August 9, 2007 (Resolution No. R07-012). This TMDL was subsequently approved by the State Board (Resolution No. 2008-0024), the Office of Administrative Law (File No. 2008-0519-02 S), and the United States Environmental Protection Agency, and became effective on September 23, 2008. The Water Boards filed their final return to the writ of mandate on August 6, 2008, and on August 26, 2008, the superior court entered an order discharging the writ, and dismissing the case, thus concluding the legal challenges to the Trash TMDL.

Additions:

Findings Related to the Incorporation of the Los Angeles River Watershed Trash TMDL

40. The Regional Board adopted the Los Angeles River Trash Total Maximum Daily Load (TMDL) on August 9, 2007 as an amendment to the region's Water Quality Control Plan (Basin Plan) to address water quality impairments due to trash in the Los Angeles River Watershed that were identified in 1998 on the State's Clean Water Act Section 303(d) List. This TMDL was subsequently approved by the State Board, the Office of Administrative Law (OAL), and the USEPA, and it became effective on September 23, 2008.
41. By its adoption of the Trash TMDL, the Regional Board determined that trash discharged to the Los Angeles River and its tributaries discourages recreational activity, degrades aquatic habitat, threatens wildlife through ingestion and entanglement, and also poses risks to human health. Existing beneficial uses impaired by trash in the Los Angeles River are contact

¹ The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier.

recreation (REC-1) and non-contact recreation (REC-2); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); commercial and sport fishing (COMM); wetland habitat (WET); and cold freshwater habitat (COLD).

42. The Los Angeles River Watershed Trash TMDL identifies discharges from the municipal separate storm sewer system as the principal source of trash to the Los Angeles River and its tributaries. As such, WLAs were assigned to MS4 Permittees that discharge to the MS4 system in the watershed. The WLAs are expressed as progressively decreasing allowable amounts of trash discharges from jurisdictional areas within the watershed. The Trash TMDL requires MS4 Permittees to make annual reductions of their discharges of trash to the Los Angeles River Watershed over a 9-year period, until the numeric target of zero trash discharged from the MS4 is achieved for the 2013-2014 storm year. The Basin Plan assigns MS4 Permittees within the Los Angeles River Watershed baseline Waste Load Allocations from which annual reductions are to be made. (See Basin Plan, Table 7-2.2.) The Basin Plan also specifies interim and final Waste Load Allocations as decreasing percentages of the Table 7-2.2 baseline WLAs, and specifies the corresponding "Compliance Points". (See Basin Plan, Table 7-2.3.)
43. The Los Angeles River Watershed Trash TMDL specifies that the WLAs shall be implemented through MS4 permits. Federal regulations require that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. (40 CFR 122.44(d)(1)(vii)(B).) State law requires both that the Regional Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply "any more stringent effluent standards or limitations necessary to implement water quality control plans..." (Wat. Code §§ 13263, 13377).
44. The Ninth Circuit Court of Appeals in *Defenders of Wildlife v. Browner* ruled that the Clean Water Act grants the permitting agency discretion either to require "strict compliance" with water quality standards through the imposition of numeric effluent limitations, or to employ an iterative approach toward compliance with water quality standards, by requiring improved BMPs over time (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159). In a precedential decision, the State Board acknowledged that the holding in *Browner* allows the issuance of MS4 permits that limit their provisions to BMPs that control pollutants to the MEP, and which do not require compliance with water quality standards. However, the Water Boards have declined to adopt that approach in light of the impacts of discharges from MS4s on waters throughout the State and Los Angeles region (see Order WQ 2001-15 and Part 2 of the LA County MS4 Permit). The State Board concluded and the Regional Board agrees that "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" (Order WQ 2001-15, p. 8).
45. In a recent decision, the State Board also concluded that incorporation of the provisions of TMDLs into MS4 permits requires extra consideration. Specifically, the State Board held: "TMDLs, which take significant resources to develop and finalize, are devised with specific implementation plans and compliance dates designed to bring impaired waters into compliance with water quality standards. It is our intent that federally mandated TMDLs be given substantive effect. Doing so can improve the efficacy of California's NPDES storm water permits." The State Board stated that TMDLs should not be an "academic exercise", and indicated that in some instances when implementing TMDLs, numeric effluent

limitations may be an appropriate means of controlling pollutants in storm water, provided the Regional Board's determination is adequately supported in the permit findings (Order WQ 2009-0008). The following paragraphs support the Regional Board's determination to implement the Trash TMDL with numeric effluent limitations.

46. The Trash TMDL specified a specific formula for calculating and allocating annual reductions in trash discharges from each jurisdiction. The formula results in specified annual amounts of trash that may be discharged from each jurisdiction into the receiving waters. Translation of the compliance points described in the TMDL into jurisdiction-specific load reductions from the baseline levels, as specified in the TMDL, logically results in the articulation of an annual limit on the amount of a pollutant that may be discharged. The specification of allowable annual trash discharge amounts meets the definition of an "effluent limitation", as that term is defined in subdivision (c) of section 13385.1 of the California Water Code. Specifically, the trash discharge limitations constitute a "numeric restriction ... on the quantity [or] discharge rate ... of a pollutant or pollutants that may be discharged from an authorized location." While there may be other ways to incorporate the compliance points from the TMDL into permit conditions, the Regional Board is not aware of any other mechanisms that would result in actual compliance with the requirements of the TMDL as it was intended.
47. The process to establish the Trash TMDL was exceedingly lengthy, heavily litigated and scrutinized, and contained extensive analysis. The essence of this TMDL has been twice ~~approved-adopted~~ by the Regional Board, and approved by the State Board, OAL, and the US EPA, and has been subject to considerable judicial review. Therefore, the assumptions underlying this TMDL have been thoroughly vetted by staff, stakeholders, other agencies, and the courts over a significant period of time.
48. In its resolution establishing the Trash TMDL, the Regional Board already determined that the implementation schedule was reasonable and feasible, and noted that the MS4 Permittees had notice of the trash impairment since at least 1998 (with its listing on the 1998 303(d) list) and had been required to attain water quality standards for trash in the receiving waters since this order was first adopted in December of 2001. (See e.g., Resolution R07-012, finding 14.) The Court of Appeal affirmed the Regional Board's determination that the final waste load allocations were attainable and not inordinately expensive. (*Cities of Arcadia*, 135 Cal.App.4th at 1413 and 1427-1430.) Full capture systems, partial capture devices, and institutional controls are presently available to feasibly and practicably attain the interim and final effluent limitations, and it is anticipated that this order will precipitate additional innovations in control strategies and technologies, just as the adoption of the Trash TMDL resulted in the proffering and certification of seven full capture systems.
49. The Trash TMDL and this order include provisions that allow Permittees to be deemed in compliance with their effluent limitations through the installation of certain best management practices (certified full capture systems). Any Permittee that is deemed in compliance through the use of certified full capture systems would not be in violation of the effluent limitations even if some trash is discharged in excess of the annual limitations.
50. The Trash TMDL includes provisions requiring its reconsideration after a trash reduction of 50% has been achieved and sustained in the watershed, which provides an opportunity to reexamine some of the assumptions of the TMDL after tangible and meaningful progress has been made in the watershed. —(See Basin Plan, Table 7-2.3, fn. 2.) Should this reconsideration result in a modification to the final waste load allocations, the permit will be reopened pursuant to Part 6., paragraph I.1.b. to ensure the effluent limitations contained in

Tables 1a and 1b of Appendix 7-1 are consistent with the assumptions and requirements of any revised waste load allocations. (40 CFR § 122.44(d)(1)(vi)(B).)

51. Depending upon the compliance strategy selected by each Permittee, compliance with the effluent limitations set forth in Appendix 7-1 may require a demonstration that the Permittee is in strict compliance with water quality standards. It remains the Permittee's choice, however, to comply via certified full capture systems (which do not require a demonstration of strict compliance with water quality standards), or partial capture devices and/or institutional controls.
52. Section 402(p)(3)(B)(iii) of the Clean Water Act, requires MS4 Permittees to reduce the pollutants in their storm water discharges to the "maximum extent practicable" (MEP). As set forth herein, "practicable" options presently exist to achieve compliance with the effluent limitations. Since the effluent limitations can be practicably achieved, their imposition is within the federally mandated MEP standard, and no analysis contemplated by *City of Burbank v. SWRCB* (2005) 35 Cal.4th 613 pursuant to Water Code section 13241 is necessary to support these effluent limitations.
53. In its discretion, the Regional Board may administratively impose civil liability of up to \$10,000 for "each day in which the violation [of waste discharge requirements] occurs." (Wat. C. § 13385, subd (c).) Not every storm event may result in trash discharges. The Los Angeles River Trash TMDL adopted by the Regional Board states that improperly deposited trash is mobilized during storm events of greater than 0.25 inches of precipitation. Therefore, Violations-violations of the effluent limitations, therefore, are limited to the days of a storm event of greater than 0.25 inches. Once a Permittee has violated the annual effluent limitation, any subsequent discharges of trash during any day of a storm event of greater than 0.25 inches during the same storm year constitutes an additional "day in which the violation [of the effluent limitation] occurs".
54. Unlike subdivision (c) of Water Code section 13385 where violations of effluent limitations are assessed on a per day basis, the mandatory minimum penalties subdivisions (Wat. Code § 13385, subd. (h) and (i)) require the Regional Board to assess mandatory minimum penalties for "each violation" of an effluent limitation. The effluent limitations in Appendix 7-1 are expressed as annual limitations. Therefore, there can be no more than one violation of each interim or final effluent limitation per year. Trash is considered a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 of the Code of Federal Regulations. Therefore, each annual violation of an effluent limitation in Appendix 7-1 by forty percent or more would be considered a "serious violation" under subdivision (h). With respect to the final effluent limitation of zero trash, any detectable discharge of trash necessarily is a serious violation, in accordance with the State Board's Enforcement Policy. Violations of the effluent limitations in Appendix 7-1 would not constitute "chronic" violations that would give rise to mandatory liability under subdivision (i) because four or more violations of the effluent limitations subject to a mandatory penalty cannot occur in a period of six consecutive months.
55. Therefore, the modifications to the Order include effluent limitations in a manner consistent with the assumptions and requirements of the WLAs from which they are derived as well as an allowance to comply with these effluent limitations [*i.e.* WLAs] through proper installation and maintenance of certified full capture systems.
56. Modifications consistent with the assumptions and requirements of the TMDL are therefore included in Parts 4 (Special Provisions) and 5 (Definitions) of this Order. Part 7 (Total

Maximum Daily Load Provisions) is added to this Order and incorporates provisions to assure that Los Angeles County MS4 Permittees achieve the Waste Load Allocations (WLAs) and comply with other requirements of Total Maximum Daily Loads (TMDLs) covering impaired waters impacted by the Permittees' discharges. These modifications are made pursuant to 40 CFR sections 122.41(f), 122.44.(d)(1)(vii)(B), and 122.62, and Part 6.I.1 of this Order. Tables 7-2.1, 7-2.2, and 7-2.3 of the Basin Plan set forth the pertinent provisions of the Los Angeles River Watershed Trash TMDL. The interim and final effluent limitations consistent with the assumptions and requirements of the waste load allocations, and related provisions required of Permittees within the watershed are provided in Part 7 of this Order.

57. Permittees identified as responsible agencies in the Trash TMDL may achieve compliance with interim and final effluent limitations through progressive installation of BMPs meeting the definition of "full capture" throughout their jurisdictions' drainage areas. Alternatively, Permittees may install "partial capture" devices and/or implement institutional controls to meet their respective interim and final effluent limitations. Where partial capture devices are utilized as the sole trash control measure, the degree of compliance may be demonstrated based upon performance data specific to the jurisdictional area. However, compliance with the final effluent limitation cannot be achieved through the exclusive use of partial capture devices. In the latter case Where a combination of partial capture devices and institutional controls are used, compliance shall be determined based on the direct measurement approximation of jurisdiction-specific trash discharges or site specific performance data.
58. The Executive Officer will develop a standard reporting form, consistent with these provisions, which shall be used by Permittees to report compliance with the effluent limitations on an annual basis.
60. Pursuant to federal regulations at 40 CFR sections 124.8 and 125.56, a Fact Sheet was prepared to provide the basis for incorporating the Los Angeles River Watershed Trash TMDL into this Order. This Fact Sheet is hereby incorporated by reference into these findings.

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Revisions to:

Part 4. SPECIAL PROVISIONS, F. Public Agency Activities Programs

5. Storm Drain Operation and Management
- a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:
- Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
 - Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
 - Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.
- b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:
- (1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;
 - (2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;
 - (3) Record keeping of catch basins cleaned; and
 - (4) Recording of the overall quantity of catch basin waste collected.
- If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.
- Permittees subject to the Los Angeles River Watershed Trash TMDL shall implement the requirements set forth in Part 7. Total Maximum Daily Load Provisions, subsection 1 "TMDL for Trash in the Los Angeles River Watershed".
- c) Permittees not subject to a trash TMDL shall:
- (1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

- (2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.
- (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Additions to Part 5, incorporated into existing Part 5 alphabetically:

PART 5 - DEFINITIONS

“Baseline Waste Load Allocation” means the Waste Load Allocation assigned to a Permittee before reductions are required. The progressive reductions in the Waste Load Allocations are based on a percentage of the Baseline Waste Load Allocation. The Baseline Waste Load Allocation for each jurisdiction was calculated based on the annual average amount of trash discharged to the storm drain system from a representative sampling of land use areas, as determined during the Baseline Monitoring Program. The Baseline Waste Load Allocations are incorporated into the Basin Plan at Table 7-2.2.

“Daily Generation Rate (DGR)” means the estimated amount of trash deposited within a representative drainage area during a 24-hour period, derived from the amount of trash collected from streets and catch basins in the area over a 30-day period.

“Drainage” includes all drainage into the MS4, including urban runoff (non-storm water) and storm water.

“Full Capture System” means any single device or series of devices, certified by the Executive Officer, that traps all particles retained by a 5 mm mesh screen and has 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 Rational Equation is used to compute the peak flow rate:

$$Q = C \times I \times A,$$

Where:

Q = design flow rate (cubic feet per second, cfs);

C = runoff coefficient (dimensionless);

I = design rainfall intensity (inches per hour, as determined per the Los Angeles County rainfall isohyetal maps relevant to the Los Angeles River watershed),¹ and

A = sub-drainage area (acres).

“Partial Capture Device” means any structural trash control device that has not been certified by the Executive Officer as meeting the “full capture” performance requirements.

“Institutional Controls” means programmatic trash control measures that do not require construction or structural modifications to the MS4. Examples include street sweeping, public education, and clean out of catch basins that discharge to storm drains.

¹ The isohyetal map may be updated annually by the Los Angeles County hydrologist to reflect additional rain data gathered during the previous year. Annual updates published by the Los Angeles County Department of Public Works are prospectively incorporated by reference into this Order.

Addition of New Part 7:

PART 7 - TOTAL MAXIMUM DAILY LOAD PROVISIONS

The provisions of this Part implement and are consistent with the assumptions and requirements of Waste Load Allocations from TMDLs for which some or all of the Permittees in this Order are responsible.

1. TMDL for Trash in the Los Angeles River Watershed

- A. Waste Load Allocations: Each Permittee identified in Appendix 7-1 shall comply with the interim and final effluent limitations set forth in Appendix 7-1 hereto.²
- B. Compliance:
- (1) Permittees may comply with the effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, or *institutional controls*, as described below, and any combination of these may be employed to achieve compliance:
 - (a) Full Capture Systems:
 - 1) The Basin Plan authorizes the Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System." (See Appendix 7-2.)³
 - 2) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of paragraph 3), immediately below, and any conditions in the certification, continue to be met.
 - 3) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdiction until all areas draining to the Los Angeles River system are addressed. For purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where

² The interim and final effluent limitations set forth in Appendix 7-1 are equivalent to the Compliance Points identified in Table 7-2.3 of the Basin Plan.

³ The Regional Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device.

certified *full capture systems* treat all drainage from the area, provided that the *full capture systems* are adequately sized, and maintained, and that maintenance records and performance data are maintained up-to-date and available for inspection by the Regional Board.

- i. A Permittee relying entirely on *full capture systems* shall be deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction are serviced by appropriate certified *full capture systems* as described in paragraph (a)(3).
- ii. A Permittee relying entirely on *full capture systems* shall be deemed in compliance with its interim effluent limitations:
 1. By demonstrating that *full capture systems* treat the percentage of drainage areas in the watershed that corresponds to the required trash abatement.
 2. Alternatively, a Permittee may propose a schedule for jurisdiction-wide installation of *full capture systems*, targeting first the areas of greatest trash generation (based upon the information on drainage area and litter generation rates by land use provided in Appendices I and III of the Los Angeles River Trash TMDL Staff Report) for the Executive Officer's approval. The Executive Officer shall not approve any such schedule that does not result in timely compliance with the final effluent limitations. A Permittee shall be deemed in compliance with its interim effluent limitations provided it is fully in compliance with any such approved schedule.

(b) Partial Capture Devices and Institutional Controls:
Permittees may comply with their interim and final effluent

limitations through the installation of *partial capture devices* and the application of *institutional controls*.⁴

- 1) Trash discharges from areas serviced solely by *partial capture devices* may be estimated based on demonstrated performance of the device(s) in the jurisdictional area.⁵ That is, trash reduction is equivalent to the *partial capture devices*' trash removal efficiency multiplied by the percentage of drainage area serviced by the devices.
- 2) Except as provided in subdivision 3), below, trash discharges from areas addressed by *institutional controls* and/or *partial capture devices* (where site-specific performance data is not available) shall be calculated using a mass balance approach, based on the daily generation rate (DGR) for a representative area.⁶ The DGR shall be determined from direct measurement of trash deposited in the drainage area during any thirty-day period between June 22nd and September 22nd exclusive of rain events⁷, and shall be re-calculated every year thereafter. The DGR shall be calculated as the total amount of trash collected during this period divided by 30 (the length of the collection period).

$$DGR = (\text{Amount of trash collected during a 30-day collection period}^8) / (30 \text{ days})$$

The DGR for the applicable area of the jurisdiction shall be extrapolated from that of the representative drainage area. A mass balance equation shall be used to estimate the amount of trash discharged during a storm event.⁹ The *Storm Event Trash Discharge* for a given rain event in a Permittee's drainage area shall be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the amount of any trash recovered in the catch basins.¹⁰ For each day of a

⁴ While interim effluent limitations may be complied with using partial capture devices, compliance with final effluent limitations cannot be achieved with the exclusive use of partial capture devices.

⁵ Performance shall be demonstrated under different conditions (e.g. low to high trash loading).

⁶ The area should be representative of the land uses within the jurisdiction and shall be approved by the Executive Officer prior to the 30-day collection period.

⁷ Provided no special events are scheduled that may affect the representative nature of that collection period.

⁸ Between June 22nd and September 22nd

⁹ Amount of trash shall refer to the uncompressed volume (in gallons) or drip-dry weight (in pounds) of trash collected.

¹⁰ Any negative values shall be considered to represent a zero discharge.

storm event that generates precipitation greater than 0.25 inches, the Permittee shall calculate a *Storm Event Trash Discharge*.

$$\text{Storm Event Trash Discharge} = [(\text{Days since last street sweeping} * \text{DGR})] - [\text{Amount of trash recovered from catch basins}]^{11}$$

The sum of the *Storm Event Trash Discharges* for the storm year shall be the Permittee's calculated annual trash discharge.

$$\text{Total Storm Year Trash Discharge} = \sum \text{Storm Event Trash Discharges from Drainage Area}$$

- 3) The Executive Officer may approve alternative compliance monitoring approaches for calculating total storm year trash discharge, upon finding that the program will provide a scientifically-based estimate of the amount of trash discharged from the MS4.

(c) Combined Compliance Approaches:

Permittees may comply with their interim and final effluent limitations through a combination of *full capture systems*, *partial capture devices*, and *institutional controls*.

Permittees relying on a combination of approaches shall demonstrate compliance with the interim and final effluent limitations as specified in (a)(3) in areas where *full capture systems* are installed and as specified in (b)(2) in areas where *partial capture devices* and *institutional controls* are applied.

- (2) Permittees that are not in compliance with the applicable interim and/or final effluent limitations as identified in Appendix 7-1 shall be in violation of this permit.

- (a) Permittees relying on *partial capture devices* and/or *institutional controls* that have violated their interim or final effluent limitations as identified in Appendix 7-1 shall be presumed to have violated the applicable limitation for each day of each storm event that generated precipitation greater than 0.25 inches during the applicable storm year, except those storm days on which they establish that their cumulative Storm Event Trash Discharges have not exceeded the applicable effluent limitation.

¹¹ When more than one storm event occurs prior to the next street sweeping the discharge shall be calculated from the date of the last assessment.

(b) For Permittees relying on full capture systems who have failed to demonstrate that the *full capture systems* for any ~~drainage~~drainage area are adequately sized, ~~and maintained, and that maintenance records and performance data are maintained up-to-date~~ and available for inspection by the Regional Board, and that they are in compliance with any conditions of their certification, shall be presumed to have discharged trash in an amount that corresponds to the percentage of the baseline waste load allocation represented by the ~~drainage~~drainage area in question.

1) A ~~permittee~~Permittee may overcome this presumption by demonstrating (using any of the methods authorized in this Part 7.1.B(1)(b)-) that the actual or calculated discharge for that ~~drainage~~drainage area is in compliance with the applicable interim or final effluent limitations as specified in Appendix 7-1.

(3) ~~Any Permittee that fails to demonstrate that it is in compliance with the interim and final effluent limitations as specified in this Part 7.1 shall be presumed to have violated the applicable interim and/or final effluent limitations.~~

(4)(3) ~~Any Permittee that establishes that it lacks authority over the MS4 physical infrastructure because it is under the authority of the Los Angeles County Flood Control District shall be held jointly and severally liable with the Los Angeles County Flood Control District for violations of the interim or final effluent limitations assigned to that jurisdiction unless the Permittee and the Flood Control District submit a duly executed agreement (the terms of which has been approved by the Executive Officer to ensure it is consistent with the requirements of this Order) that allocates between them all responsibility for compliance with these provisions, and further provided that the Permittee is in compliance with its respective obligations under the agreement.~~

C. Monitoring and Reporting Requirements (pursuant to Water Code section 13383)

(1) Within 60 days of adoption of Part 7, Section 1 (Los Angeles River Trash TMDL) and on October 31, 2010 and every year thereafter, each Permittee identified in Appendix 7-1 shall submit a TMDL Compliance Report detailing compliance with the interim and final effluent limitations. Reporting shall include the information specified below. The report shall be submitted on a reporting form to be specified by the Executive Officer. The report shall be signed under penalty of perjury by the Director of Public Works or other agency head (or their delegee) that is responsible for ensuring compliance with this permit. Permittees shall be charged with and

shall demonstrate compliance with the relevant effluent limitations beginning with their October 31, 2010 TMDL Compliance Report.

(a) Reporting Compliance based on Full Capture Systems:

Permittees identified in Appendix 7-1 shall provide information on the number and location of full capture installations, the sizing of each full capture installation, the drainage areas addressed by these installations, and compliance with the applicable interim or final effluent limitation, in their TMDL Compliance Report. The Regional Board will periodically audit sizing, performance, and other data to validate that a system satisfies the criteria established for a *full capture system* and any conditions established by the Executive Officer in the certification.

(b) Reporting Compliance based on Partial Capture Systems and/or Institutional Controls:

(1) Using Site-Specific Performance Data:

Permittees identified in Appendix 7-1 shall provide (i) site-specific performance data for the applicable device(s), (ii) information on the number and location of such installations, and the drainage areas addressed by these installations, and (iii) calculated compliance with the applicable effluent limitations, in their TMDL Compliance Report.

(2) Using Direct Measurement of Trash Discharge:

Permittees identified in Appendix 7-1 shall provide an accounting of DGR and trash removal via street sweeping, catch basin clean outs, etc., in a database to facilitate the calculation of discharge for each rain event. The database shall be maintained and provided to the Regional Board for inspection upon request.

Permittees identified in Appendix 7-1 shall provide the annual DGR, calculated storm year discharge, and compliance with the applicable effluent limitation, in their TMDL Compliance Report.

(c) Reporting Compliance based on Combined Compliance Approaches:

Permittees identified in Appendix 7-1 shall provide the information specified in subsection (a) for areas where full capture systems are installed and that specified in subsection (b)(1) or (b)(2), as appropriate, for areas where partial capture devices and institutional controls are applied. Permittees shall also provide information on compliance with the applicable effluent limitation based on the combined compliance approaches, in their TMDL Compliance Report

(2) Violation of the reporting requirements of this Part shall be punishable pursuant to inter alia Water Code subdivision (a)(1) of section 13385.1 and/or subdivision (a)(3) of section 13385.

TENTATIVE

Appendix 7-1

**Interim and Final Effluent Limitations for Trash for Permittees Identified as Responsible
Jurisdictions in the Los Angeles River Watershed Trash TMDL**

TENTATIVE

Table 1a: Los Angeles River Watershed Trash Effluent Limitations¹² per Storm Year¹³
(gallons of uncompressed trash)

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ¹⁴ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|----------------------------|
| Alhambra | 19952 | 15961 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 25054 | 20043 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 8013 | 6410 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 6750 | 5400 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 2139 | 1711 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 46295 | 37036 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 11253 | 9002 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 3416 | 2733 | 2050 | 1366 | 683 | 225 | 0 |
| Commerce | 29367 | 23493 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 26596 | 21276 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 2968 | 2374 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 19532 | 15625 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 6105 | 4884 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 21104 | 16883 | 12662 | 8442 | 4221 | 1393 | 0 |
| Glendale | 70157 | 56126 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 1832 | 1465 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 9580 | 7664 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 6176 | 4941 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 16748 | 13398 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 687423 | 549938 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 155112 | 124089 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 14101 | 11280 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 3065 | 2452 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 23344 | 18675 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 25185 | 20148 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 19450 | 15560 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 13726 | 10981 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 55999 | 44799 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 6977 | 5581 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 13653 | 10922 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 6974 | 5579 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 10172 | 8137 | 6103 | 4069 | 2034 | 671 | 0 |
| San Marino | 7196 | 5756 | 4317 | 2878 | 1439 | 475 | 0 |
| Santa Clarita | 451 | 360 | 270 | 180 | 90 | 30 | 0 |
| Sierra Madre | 5806 | 4644 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 4717 | 3774 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 69 | 55 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 8000 | 6400 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 21952 | 17562 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 7454 | 5963 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 8786 | 7029 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 23602 | 18881 | 14161 | 9441 | 4720 | 1558 | 0 |

¹² Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

¹³ Storm year is defined as October 1 to September 30 herein.

¹⁴ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

Table 1b: Los Angeles River Watershed Trash Effluent Limitations¹⁵ per Storm Year¹⁶
(pounds of drip-dry trash)

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ¹⁷ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|----------------------------|
| Alhambra | 34381 | 27504 | 20628 | 13752 | 6876 | 2269 | 0 |
| Arcadia | 46518 | 37214 | 27911 | 18607 | 9304 | 3070 | 0 |
| Bell | 12669 | 10135 | 7601 | 5067 | 2534 | 836 | 0 |
| Bell Gardens | 11686 | 9348 | 7011 | 4674 | 2337 | 771 | 0 |
| Bradbury | 6080 | 4864 | 3648 | 2432 | 1216 | 401 | 0 |
| Burbank | 85195 | 68156 | 51117 | 34078 | 17039 | 5623 | 0 |
| Calabasas | 26115 | 20892 | 15669 | 10446 | 5223 | 1724 | 0 |
| Carson | 5104 | 4083 | 3062 | 2042 | 1021 | 337 | 0 |
| Commerce | 42741 | 34192 | 25644 | 17096 | 8548 | 2821 | 0 |
| Compton | 43178 | 34542 | 25907 | 17271 | 8636 | 2850 | 0 |
| Cudahy | 5031 | 4024 | 3018 | 2012 | 1006 | 332 | 0 |
| Downey | 34254 | 27403 | 20552 | 13701 | 6851 | 2261 | 0 |
| Duarte | 11844 | 9475 | 7106 | 4737 | 2369 | 782 | 0 |
| El Monte | 34134 | 27307 | 20480 | 13653 | 6827 | 2253 | 0 |
| Glendale | 146749 | 117399 | 88049 | 58700 | 29350 | 9685 | 0 |
| Hidden Hills | 5411 | 4328 | 3246 | 2164 | 1082 | 357 | 0 |
| Huntington Park | 15465 | 12372 | 9279 | 6186 | 3093 | 1021 | 0 |
| Irwindale | 8956 | 7164 | 5373 | 3582 | 1791 | 591 | 0 |
| La Cañada Flintridge | 36874 | 29499 | 22124 | 14749 | 7375 | 2434 | 0 |
| Los Angeles | 1286250 | 1029000 | 771750 | 514500 | 257250 | 84893 | 0 |
| Los Angeles County | 325903 | 260722 | 195542 | 130361 | 65181 | 21510 | 0 |
| Lynwood | 23234 | 18587 | 13940 | 9293 | 4647 | 1533 | 0 |
| Maywood | 5275 | 4220 | 3165 | 2110 | 1055 | 348 | 0 |
| Monrovia | 50494 | 40395 | 30296 | 20198 | 10099 | 3333 | 0 |
| Montebello | 41854 | 33483 | 25112 | 16741 | 8371 | 2762 | 0 |
| Monterey Park | 35228 | 28182 | 21137 | 14091 | 7046 | 2325 | 0 |
| Paramount | 22245 | 17796 | 13347 | 8898 | 4449 | 1468 | 0 |
| Pasadena | 103757 | 83006 | 62254 | 41503 | 20751 | 6848 | 0 |
| Pico Rivera | 11275 | 9020 | 6765 | 4510 | 2255 | 744 | 0 |
| Rosemead | 23689 | 18951 | 14213 | 9476 | 4738 | 1563 | 0 |
| San Fernando | 11539 | 9231 | 6923 | 4615 | 2308 | 762 | 0 |
| San Gabriel | 18219 | 14575 | 10931 | 7287 | 3644 | 1202 | 0 |
| San Marino | 14574 | 11659 | 8744 | 5829 | 2915 | 962 | 0 |
| Santa Clarita | 1163 | 930 | 698 | 465 | 233 | 77 | 0 |
| Sierra Madre | 12596 | 10077 | 7558 | 5038 | 2519 | 831 | 0 |
| Signal Hill | 7110 | 5688 | 4266 | 2844 | 1422 | 469 | 0 |
| Simi Valley | 172 | 138 | 103 | 69 | 34 | 11 | 0 |
| South El Monte | 12160 | 9728 | 7296 | 4864 | 2432 | 803 | 0 |
| South Gate | 36167 | 28933 | 21700 | 14467 | 7233 | 2387 | 0 |
| South Pasadena | 14179 | 11343 | 8507 | 5671 | 2836 | 936 | 0 |
| Temple City | 15910 | 12728 | 9546 | 6364 | 3182 | 1050 | 0 |
| Vernon | 33407 | 26726 | 20044 | 13363 | 6681 | 2205 | 0 |

¹⁵ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

¹⁶ Storm year is defined as October 1 to September 30 herein.

¹⁷ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

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Appendix 7-2

**Procedures and Requirements for Certification of a Best Management Practice for Trash
Control as a Full Capture System**



California Regional Water Quality Control Board

Los Angeles Region



Terry Tamminen
Secretary for
Environmental
Protection

Over 51 Years Serving Coastal Los Angeles and Ventura Counties
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Governor

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TO: Jonathan Bishop
Interim Executive Officer

FROM: Michael Yang, P.E.
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

DATE: August 3, 2004

SUBJECT: PROCEDURES AND REQUIREMENTS FOR CERTIFICATION OF A BEST MANAGEMENT PRACTICE FOR TRASH CONTROL AS A FULL CAPTURE SYSTEM

This memorandum describes Regional Board procedures and information required in order to perform a technical evaluation to certify a best management practices (BMP) as a "full capture system" for the control of trash.

Background

The Los Angeles Regional Water Quality Control Board adopted the definition of "full capture system" for the Ballona Creek Trash TMDL per Resolution No. 04-023 on March 4, 2004. This definition will be considered applicable for all receiving waters in the Los Angeles Region identified as being impaired for Trash. The Regional Board staff will analyze all future proposed BMPs for certification as a "full capture system" based on the Ballona Creek Trash TMDL definition.

The definition of a "full capture system" as defined in the Resolution No. 04-023 is as follows:

" A full capture system is any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate (Q) resulting from a one-year, one-hour, storm in the subdrainage area. Rational equation is used to compute the peak flow rate: $Q = C \times I \times A$, where Q = design flow rate (cubic feet per second, cfs); C = runoff coefficient (dimensionless); I = design rainfall intensity (inches per hour, as determined per the rainfall isohyetal map), and A = subdrainage area (acres)."

Essential Technical Information

In order to perform a technical analysis and consider for certification approval, the Regional Board staff requests the following information from dischargers for evaluation of their BMPs as a "full capture system" for trash:

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14-25B

11-43

1. Subdrainage area, A that only drains into the pipe containing BMP.
2. Hydraulic capacity of the pipe containing BMP at cubic feet per second.
3. Average runoff coefficient , C where

$$C = (A1*C1 + A2*C2 + A3*C3 + \dots An*Cn) / (A1 + A2 + A3 + \dots An)$$

A1 through An represents subareas for each land use, and
C1 through Cn represents runoff coefficients for each land use

4. The reported BMP treatment capacity at cubic feet per second.

Los Angeles County Department of Public Works (LACDPW) has already provided an isohyetal map for one-year, one- hour rainfall intensity per definition of a full capture system. For certification, BMP must trap all particles retained by a 5-mm mesh screen, and have a treatment capacity exceeding peak flow rate resulting from a one-year, one-hour, storm in the subdrainage area. In addition, the following requirements must be met:

- End-of-Pipe Configuration: Certain BMPs, which can create a pressure drop, must have an end-of-pipe configuration and not rely on diversion weirs.
- Adequate Pipe Sizing: The pipes carrying the flows from the subdrainage area should be able to handle peak flows.
- Regular Inspections and Maintenance: The full capture system must be regularly inspected and serviced to continually maintain adequate flow through capacity.

Conditional Transferability

The determination and certification that the BMP satisfies the "full capture system" definition of the trash TMDL will allow the system to be used elsewhere in the region. Dischargers will have an on-going obligation to demonstrate that the installation of a particular system is appropriately sized. Likewise, dischargers will be responsible for on-going maintenance to ensure the systems perform to design specifications. The Regional Board will review and consider performance data on continuing basis. In the event data demonstrate that the systems are not performing to the full capture design standard established by the trash TMDL, then the Regional Board reserves the ability to rescind the certification for subsequent installations.

Process for Submittal

A letter requesting "full capture system certification" along with supporting documentation must be submitted to the Regional Board Executive Officer to start the process. Within thirty (30) days of receipt of the letter and documentation, the Regional Board staff will contact the proponent, and schedule a time for a presentation to Regional Board staff and to perform a site survey if necessary. At the conclusion of the presentation, Regional Boards staff will

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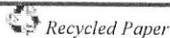


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communicate orally to the proponent any supplemental documentation or information that needs to be submitted to complete the evaluation of the proposed BMP as a "full capture system". A letter acknowledging the receipt of the certification request and identifying any supplemental documentation to be submitted will be sent within 15 days of the completion of the presentation. Regional Board staff will make a written determination on the certification of the proposed BMP as a full capture system within ninety (90) days after the receipt of all requested documentation.

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
320 W. 4TH STREET
SUITE 200
LOS ANGELES, CA 90013

FACT SHEET

SUPPORTING AMENDMENTS TO THE LOS ANGELES COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT
(ORDER NO. 01-182; NPDES PERMIT NO. CAS004001) TO
INCORPORATE WASTE LOAD
ALLOCATIONS FOR TRASH PURSUANT TO THE
LOS ANGELES RIVER WATERSHED TRASH TMDL

REVISED 11/24/09

Table of Contents

Introduction 1
Background: Summary of Impairments and TMDL Elements 65
Statutory History and Requirements 10
State Regulatory Authority 14
Current Status and Basis for Action..... 19
Alternatives Considered 23
Recommended Action 26
Opportunity for Public Comment..... 27

Introduction

The Los Angeles Regional Water Quality Control Board (Regional Board) staff proposes a limited reopening of the LA County Municipal Separate Storm Sewer System (MS4) Permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) and associated provisions for discharges from the MS4 to the Los Angeles River and its tributaries as required by federal regulation and state law.¹

Summary of LA River Trash TMDL

The LA River Trash TMDL was established to address the documented impairments in the Los Angeles River Watershed due to trash that were identified on the State's Clean Water Act Section 303(d) List of impaired waters, and to ultimately achieve the narrative water quality objectives contained in the Basin Plan for both "Floating Material" and "Solid, Suspended, or Settleable Materials" that require:

"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses"; and

"Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses."

The TMDL requires progressive annual reductions in discharges of trash from the MS4 from an established baseline for each permittee identified as a responsible jurisdiction in the TMDL, until the final numeric target of zero trash discharge is attained. The compliance deadlines for the interim waste load allocations are at the end of each storm period (October 1 to September 30). Compliance with the final waste load allocations is required by September 30, 2016. The proposed permit modifications rely upon the translation of Basin Plan Tables 7-2.2 into

¹ Tributaries to the Los Angeles River include but are not limited to Pacoima Wash, Tujunga Wash, Burbank Western Channel, Verdugo Wash, Arroyo Seco, the Rio Hondo, and Compton Creek.

jurisdiction-specific waste load allocations (see Appendix-1 hereto). Appendix 1 has been translated into effluent limitations contained in Appendix 7-1 of the permit by calculating the corresponding three-year rolling average.

TMDL History

The Los Angeles River Trash TMDL was initially adopted by the Regional Board on September 19, 2001. Twenty-two cities² ("Cities") sued the Regional Board and State Board to set aside the TMDL, stopping progress towards halting the thousands of tons of garbage that is discharged to the Los Angeles River and its tributaries. The trial court entered an order deciding some claims in favor of the Regional Board and State Board and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the Boards, except with respect to CEQA compliance (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392).³

The Court of Appeal rejected the following claims litigated by the Cities:

- a. The Court rejected the Cities' claim that the target of zero trash is unattainable and inordinately expensive. (135 Cal.App.4th at 1413 and 1427-1430.)
- b. The Court rejected the Cities' claim that an assimilative capacity study was required before the Boards could determine how much trash, a pollutant that does not assimilate, would violate the narrative objectives. (135 Cal.App.4th at 1409-1413.)

² The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier.

³ The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities' claims.

- c. The Court rejected the Cities' claim that the Boards were required, but failed, to conduct a cost/benefit analysis and consideration of economic factors. (135 Cal.App.4th at 1415-1418.)
- d. The Court rejected the Cities' claim that the Boards were prohibited from establishing a TMDL for the Los Angeles River Estuary until it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)
- e. The Court rejected the Cities' claims that TMDLs for storm water may not require agencies to perform better than the "maximum extent practicable", and must allow compliance through best management practices. (135 Cal.App.4th at 1427-1430.)
- f. The Court rejected the Cities' claim that the Boards were required to implement load allocations for nonpoint sources of trash pollution. (135 Cal.App.4th at 1430-1432.)
- g. The Court rejected the Cities' claim that the Boards failed to adhere to the data collection and analysis required by federal and state law (135 Cal.App.4th at 1433-34.)
- h. The Court rejected the Cities' claim that the Boards relied on nonexistent, illegal, and irrational uses to be made of the Los Angeles River. (135 Cal.App.4th at 1432-33.)
- i. The Court rejected the Cities' claim that the Boards violated the Administrative Procedures Act (APA). (135 Cal.App.4th at 1434-35.)

The Court did find, however, that the Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the Boards should have performed an EIR level of analysis. (135 Cal.App.4th at 1420-26.) The Court therefore declared the Trash TMDL void, and issued a writ of mandate that ordered the Boards to

set aside and not implement the TMDL, until it has been brought into compliance with California Environmental Quality Act.

As a result of the appellate court's decision, in 2006 the Regional Board set aside its 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). After conducting the required CEQA analysis, the Regional Board readopted the Los Angeles River Watershed Trash TMDL on August 9, 2007 (Resolution No. 2007-0012).⁴ This TMDL was subsequently approved by the State Water Resources Control Board (Resolution No. 2008-0024), the Office of Administrative Law (File No. 2008-0519-02 S), and the United States Environmental Protection Agency, and became effective on September 23, 2008.

Summary of Proposed Action

The Regional Board proposes to incorporate the interim and final WLAs, expressed as annual reductions in discharges of trash from individual jurisdictional areas within the Los Angeles River Watershed, into the LA County MS4 Permit. Additionally, the Regional Board proposes to incorporate provisions that specify alternative means of determining compliance with the interim and final WLAs. These include:

- (i) a technology based approach whereby BMPs meeting the design standard of "full capture" may be properly installed and maintained to demonstrate compliance with the WLAs,
- (ii) a numeric effluent limitation based approach whereby "partial capture" BMPs and institutional controls not meeting the design standard of "full

⁴ The Regional Board first adopted the Los Angeles River Trash TMDL in September 2001 (Resolution R01-013). As a result of a court decision, in 2006 the Regional Board set aside its 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). In 2007, the Regional Board readopted the TMDL with the revised CEQA analysis ordered by the court (Resolution R07-012).

capture” may be implemented in drainage areas, in which case compliance with the WLA shall be demonstrated by measuring actual reductions in trash discharges in these areas.

Either or both approaches may be used within a jurisdictional area.

The incorporation of the interim and final WLAs established in the TMDL is consistent with the iterative process of implementing BMPs employed in the current LA County MS4 Permit in that compliance with the final WLAs may be achieved over the course of nine years. However, because the waterbodies in the Los Angeles River Watershed are impaired due to trash discharges from the MS4, it is necessary to establish more specific provisions in order to (i) ensure measurable reductions in trash discharges resulting in progressive water quality improvements during the iterative process and (ii) establish a final date for completing implementation of BMPs and, ultimately, achieving WLAs and water quality standards.

The Los Angeles River Watershed Trash TMDL was lawfully adopted as an amendment to the Los Angeles Region’s Basin Plan and required compliance with interim WLAs as of September 30, 2008. Most Basin Plan provisions, including TMDLs adopted as amendments to the Basin Plan, are not self-implementing. Therefore, this limited re-opener of the MS4 Permit to incorporate the WLAs allows the implementation and enforcement of these WLAs as required by federal and state laws and regulations.

Background: Summary of Impairments and TMDL Elements

Trash in waterways causes significant water quality problems. Small and large floatables inhibit the growth of aquatic vegetation, decreasing habitat and spawning areas for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, and construction debris, among other things. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, keeping visitors away from our beaches and degrading coastal waters.

Trash is a serious and pervasive water quality problem in the Los Angeles River Watershed. The Regional Board has determined that current levels of trash exceed the existing water quality objectives contained in the Basin Plan that are necessary to protect the beneficial uses of the river. Regional Board staff regularly observes trash in the waterways of the Los Angeles River Watershed. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others organize volunteer clean-ups periodically, and document the amount of trash collected. Data on quantities of trash removed from waterways and downstream beaches are provided in the Administrative Record for the Los Angeles River Trash TMDL.

Long Beach collects large amounts of trash at the mouth of the Los Angeles River, as much of the trash carried down the Los Angeles River ends up at the river's mouth in Long Beach. Debris tonnage at the mouth of the Los Angeles River is listed in Table 1.

Table 1. Storm Debris Collection Summary for Long Beach (tons)⁵

| Storm Year | First Quarter (July-Sept.) | Second Quarter (Oct.-Dec.) | Third Quarter (Jan.-March) | Fourth Quarter (April-June) | Total |
|------------|-------------------------------|-------------------------------|-------------------------------|--------------------------------|--------|
| 1994-95 | 436 | 509 | 3,576 | 702 | 5,224 |
| 1995-96 | 504 | 344 | 3,100 | 645 | 4,593 |
| 1996-97 | 350 | 2,361 | 601 | 681 | 3,993 |
| 1997-98 | 647 | 3,650 | 4,016 | 977 | 9,290 |
| 1998-99 | 565 | 720 | 532 | 1,274 | 3,091 |
| 1999-00 | 781 | 176 | 1,664 | 1,223 | 3,844 |
| 2000-01 | 757 | 581 | 2,625 | 474 | 4,437 |
| 2001-02 | 424 | 739 | 288 | 407 | 1,858 |
| 2002-03 | 430 | 752 | 2,564 | 884 | 4,630 |
| 2003-04 | 299 | 779 | 607 | 951 | 2,636 |
| 2004-05 | 273 | 4,390 | 6,176 | 1,416 | 12,255 |
| 2005-06 | 561 | 495 | 862 | 670 | 2,591 |

Trash discharged to waterbodies discourages recreational activity, degrades aquatic habitat, threatens wildlife through ingestion and entanglement, and also poses risks to human health. Existing beneficial uses impaired by trash in the Los Angeles River are contact recreation (REC-1) and non-contact recreation (REC-2); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); commercial and sport fishing (COMM); wetland habitat (WET); and cold freshwater habitat (COLD).

The Regional Board adopted a trash TMDL for the Los Angeles River Watershed to eliminate the documented water quality impairment resulting from significant

⁵ City of Long Beach *L.A. River Debris Summary* (as of June 2006).

amounts of trash discharged to the Los Angeles River and its tributaries, and by doing so to restore the beneficial uses of the river. The TMDL establishes a numeric target of zero discharge of trash, and identifies discharges from the MS4 as the major source of trash to the Los Angeles River and its tributaries.

To achieve the numeric target of zero discharge of trash, the TMDL sets interim and final wasteload allocations (WLAs) for trash discharges in the Los Angeles River Watershed, expressed as progressive annual percentage reductions from a predetermined baseline WLA assigned to each responsible jurisdiction, until the final waste load allocation of zero discharge is allocated in 2014. The TMDL allows for compliance with these annual percentage reductions to be determined based on a two-year rolling average of the interim waste load allocations in the second year of implementation, and based on a three-year rolling average in subsequent years, resulting in a final compliance date of 2016.

Co-permittees under the LA County MS4 Permit that are identified as responsible jurisdictions in the Los Angeles River Trash TMDL include the County of Los Angeles, the County of Los Angeles Flood Control District, and the Cities of Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Cañada Flintridge, Los Angeles, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon. The City of Long Beach and the California Department of Transportation (Caltrans) are also identified as responsible jurisdictions in the trash TMDL, but their MS4 discharges are regulated under separate permits.⁶

⁶ The City of Long Beach's MS4 permit (NPDES No. CAS004003) will be re-opened at a later date to include the trash TMDL provisions. A statewide permit (NPDES No. CAS000003) issued by the State

The Los Angeles River Trash TMDL specifies under "Implementation" that the WLAs will be implemented through MS4 permits. TMDLs are not self-executing, but instead rely upon further orders or actions to adjust pollutant restrictions on individual dischargers. Federal regulations require that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation (40 CFR 122.44(d)). Similarly, state law requires both that the Regional Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply "any more stringent effluent standards or limitations necessary to implement water quality control plans..." (Wat. Code §§ 13263, 13377).

Board covers MS4 discharges from areas under the jurisdiction of Caltrans. This permit will be renewed in the near future. The Regional Board will notify the State Board of the need to incorporate all TMDL WLAs in the Los Angeles Region that apply to Caltrans along with the provisions necessary to ensure compliance. Notwithstanding, the Storm Water Monitoring Plan for Caltrans District 7 already contains implementation measures for the purpose of complying with the trash TMDL requirements.

Statutory History and Requirements

Clean Water Act Section 303(d): Impaired Waters and TMDLs

The CWA §303(d)(1)(A) requires each State to conduct a biennial assessment of its waters, and identify those waters for which technology based effluent limitations are not stringent enough to implement water quality standards. These waters are identified as impaired waters on the State's 303(d) list of water quality limited segments. The CWA also requires States to establish a priority ranking for waters on the 303(d) list and to develop and implement TMDLs for these waters.

“A TMDL defines the specified maximum amount of a pollutant which can be discharged or ‘loaded’ into [impaired waters] from all combined sources” and still allow the waterbody to meet water quality standards (*Dioxin/Organochlorine Center v. Clarke* (9th Cir. 1995) 57 F.3d 1517, 1520). A TMDL allocates the acceptable pollutant load to point and nonpoint sources. The elements of a TMDL are described in 40 CFR 130.2 and 130.7. A TMDL is defined as “the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR 130.2).

Upon establishment of TMDLs by the State or the U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6 (c) (1), 130.7). The Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Regional Board. When adopting TMDLs as a part of its Basin Plan, the Regional Board includes, as part of the TMDL, a program for implementation of the wasteload allocations for point sources and load allocations for nonpoint sources.

Essentially, TMDLs serve as a backstop provision of the CWA designed to implement water quality standards when other provisions have failed to achieve water quality standards.

Clean Water Act Section 402(p): NPDES Permits for MS4s

The federal Clean Water Act (CWA) generally prohibits the “discharge of any pollutant,” 33 U.S.C. § 1311(a), from a “point source” into waters of the United States. 33 U.S.C. § 1362(12)(A). An entity can, however, obtain a National Pollutant Discharge Elimination System (NPDES) permit that allows conditionally for the discharge of some pollutants. 33 U.S.C. § 1342(a)(1). The CWA defines point sources as “discernible, confined and discrete conveyances, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure” such as a pipe, ditch, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. 33 U.S.C. § 1362; 40 CFR 122.2.

In 1987, the U.S. Congress enacted the Water Quality Act recognizing both the environmental threats posed by storm water runoff and the U.S. EPA’s problems in implementing regulations for storm water discharges (NRDC II, 966 F.2d at 1296). These Amendments to the CWA established new statutory requirements to control industrial and municipal storm water discharges to waters of the United States (CWA § 402(p).) The amendments require NPDES permits for storm water discharges from Municipal Separate Storm Sewer Systems (MS4s) to waters of the United States, and classify MS4s as a “point source”.

The NPDES permits for MS4s (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit [unauthorized] non-storm water discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants from storm water to the maximum extent

practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (See CWA §402(p)(3)(B).)

On November 16, 1990, pursuant to CWA § 402(p), the U.S. EPA promulgated regulations at 40 CFR 122.26 which established requirements for MS4 discharges under the NPDES program.

Generally, discharges of pollutants that are covered under a NPDES permit must comply with (i) effluent limitations necessary to achieve compliance with technology based standards **as well as** (ii) **any more stringent effluent limitation “necessary to meet water quality standards”** (emphasis added) (33 U.S.C. § 1311(b)(1)(C)). In the case of MS4 NPDES discharge permits, federal courts have ruled that the CWA grants the permitting agency discretion to determine what pollutant controls are appropriate for discharges from MS4s. The federal courts held that the permitting agency has discretionary authority under “33 U.S.C. § 1342(p)(2)(E) to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants, or to require less than strict compliance with state water-quality standards, such as a BMP approach” (*Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir., 1999)). Under 33 U.S.C. § 1342(p)(3)(B)(iii), the permitting authority has the choice to include either best management practices or numeric effluent limitations in the permits. NRDC II, 966 F.2d at 1308 (“Congress did not mandate a minimum standards approach or specify that [the] EPA develop minimal performance requirements.”).

Even early in the regulatory program for MS4s, the U.S. EPA stated that if the Permittee(s) fails to implement adequate BMPs to prevent exceedance of the receiving water objectives, the permitting authority “may have to consider other

approaches to water quality protection" (61 Fed. Reg. 43761; *Interim Permitting Approach*, Response #6, EPA 833-D-96-00, 1996; Order WQ 91-03).

State Regulatory Authority

In California, trash that is discharged to waterbodies is regulated by Regional Boards through their Basin Plans. In the Basin Plans, trash is identified as both a "floatable material" and a "solid, suspended or settleable material." The Basin Plans establish narrative water quality objectives for both, stating in general terms that *waters shall not contain these materials in concentrations that cause nuisance or adversely affect beneficial uses*. These narrative objectives are consistent with water quality criteria recommended under CWA section 304(a) by the U.S. EPA (1986).

The Regional Boards implement these narrative objectives for trash through a variety of mechanisms depending upon the primary source of the trash discharges. Until recently, attempts were made to implement these narrative objectives for trash primarily through standard provisions in NPDES permits for discharges from MS4s (discussed below). Where an individual waterbody is identified as impaired due to trash, *additional* regulatory requirements are established in a TMDL and incorporated into the Basin Plan, as described earlier.

The State of California is one of forty-five States that have been granted authority under the CWA to implement the NPDES permitting program in lieu of US EPA. The Porter-Cologne Act (California Water Code) authorizes the State Board, through the nine regional boards, to issue NPDES permits, and regulate and control the discharge of pollutants into waters of the State. Regional Board-issued NPDES permits must contain provisions consistent with the State Water Quality Management Plan (Wat. Code § 13263).

Related State Administrative Actions

The State Board has affirmed that NPDES MS4 permits must prohibit discharges that cause or contribute to violations of water quality standards contained in Basin Plans or Statewide Water Quality Control Plans (See WQ 98-01, at p. 8).

In 1999, the State Board issued standard receiving water limitations language to be included in municipal storm water permits across the State consistent with this affirmation (Order WQO 99-05, which amended Order WQO 98-01).

The State Water Board had ruled earlier that municipal storm water permits must include effluent limitations necessary to achieve water quality standards (State Board Orders WQ 91-03 and WQ 91-04)⁷. The State Board concluded that these may be non-numerical, but also pointed out that if the Permittee(s) fails to implement adequate BMPs to prevent exceedance of the receiving water objectives, the regional boards may have to consider other approaches to water quality protection (Order WQ 91-03).

Later, the State Board in Order WQ 2001-15 stated that “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” (Order WQ 2001-15, p. 8). Recently, the State Board concluded that the regional boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of **either numeric or non-numeric** effluent limitations and should support their determination in the permit findings (Order WQ 2009-0008).

LA County MS4 Permit History

To comply with the CWA, the Regional Board issued the first storm water permit (“predecessor permit”) on June 18, 1990, to the municipalities (Permittees) in Los Angeles County (Order No. 90-079; NPDES Permit No. CA0061654).

⁷ In Order WQ 91-04, the State Board reviewed a complaint brought by the environmental community that the 1990 LA County MS4 Permit lacked numerical effluent limits and violated federal law.

The LA County MS4 Permit was reissued in 1996, and the current iteration of the permit was adopted on December 13, 2001 (Order No. 01-182; NPDES Permit No. CAS004001). The LA County MS4 Permit (Order No. 01-182) was amended by Order No. R4-2006-0074 on September 14, 2006. Another amendment to the Los Angeles County MS4 permit was made on August 9, 2007 by Order No. R4-2007-0042. Currently, Order No. 01-182 as amended by Order R4-2007-0042 is the Los Angeles County MS4 permit in effect.

Because of the complexity and networking of the municipal separate storm sewer system and drainage facilities within and tributary to the County of Los Angeles, the Regional Board adopted a countywide approach in permitting discharges from the MS4. The permit requires Permittees to implement timely and comprehensive programs in the areas of public involvement and participation, industrial/commercial inspection, development planning, development construction, public agency activities, and to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. In addition, it states that discharges from the MS4 to waters of the U.S., including Los Angeles River and its tributaries, may not cause or contribute to exceedances of water quality objectives.

Regulatory Scheme for Control of Trash Discharges

Consistent with U.S. EPA expectations, the trash control requirements in the first municipal stormwater permit were general and included documenting existing best management practices (BMPs), designing a stormwater monitoring program, and developing plans to optimize existing BMPs and implement additional BMPs. With each subsequent permit, there has been an increasing level of specificity in requirements to control trash, as shown in Table 2.

Table 2. Evolution of Permit Requirements for Control of Trash Discharges

| Requirements | Early Permits (Pre-TMDL) | 2nd Generation Permits (Pre-TMDL) | Recent Permits |
|--|---|---|--|
| Catch Basin (CB) Prioritization | None | None | Based on trash generation |
| CB Cleanout Frequency | 1x during summer season | 1x prior to storm season | 1-4x per year based on prioritization |
| Additional CB Cleanouts | As necessary | When 40% full | When 25% full |
| Other CB Requirements | None | None | Trash excluders or equivalent at high priority CBs |
| Street Sweeping Prioritization | None | None | Based on trash generation |
| Street Sweeping Frequency | 1x per month; where feasible, more frequently in high trash areas | Based on traffic volume | Based on trash generation |
| Open Channel Maintenance | 1x per year prior to storm season | 1x per year prior to storm season | 1x per year prior to storm season |
| Parking Lot Sweeping | 1x per month | 1x per month | 2x per month |
| TMDL requirements for impaired waterbodies | None | None | Yes |

This evolution in requirements is linked to the identification of waterbodies as impaired due to trash. The “second generation” municipal stormwater permits, which were developed around the same time as the first determination of trash impairments, reflected an increase in specificity beyond what was done in the earlier stormwater permits. Those developed later, in conjunction with the first trash TMDLs, have been further refined in terms of their requirements to control discharges of trash.

The current LA County MS4 permit contains standard provisions for controlling trash discharges from the storm drain system, including but not limited to:

- Public Information and Participation Program (PIPP) in Part 4.B, including requirements for pollutant-specific outreach on trash in the Los Angeles River Watershed beginning in February 2003;
- Industrial/Commercial Facilities Control Program in Part 4.C, including requirements for permittees to (i) inspect critical sources and (ii) require operators to implement additional controls to reduce pollutants in runoff to CWA section 303(d) impaired waters; and
- Public Agency Activities Program in Part 4.F, including requirements for storm drain operation and management, streets and roads maintenance, and parking facilities management.

In drainage areas subject to the Los Angeles River Trash TMDL, the current permit requires permittees to continue the implementation of specified catch basin inspections and cleaning until trash TMDL implementation measures are adopted. Additionally, for any special event that can be reasonably expected to generate substantial quantities of trash and litter, permittees are still required to properly manage trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

Permittees were required to place trash receptacles at all transit stops within their jurisdiction that have shelters by August 1, 2002, and at all other transit stops within their jurisdiction by February 3, 2003. Permittees are required to maintain all trash receptacles as necessary. The Principal Permittee, in cooperation with Permittees, is also required to continue coordinating outreach programs that focus on trash in the Los Angeles River.

Current Status and Basis for Action

While the Los Angeles County Department of Public Works reported a "30% decrease in roadway trash on unincorporated County roads and a 50% decrease in trash entering catchbasins since adoption of the current National Pollutant Discharge Elimination System (NPDES) Permit"⁸, these standard provisions described above have not adequately controlled trash discharges to the Los Angeles River. As a result, trash in the Los Angeles River continues to be a serious problem, causing continued impairments to recreational and aquatic life beneficial uses of the river.

Nineteen years have passed since adoption of the first MS4 permit for Los Angeles County, while eight years have passed since adoption of the current MS4 permit. There has been ample time for Permittees to implement the standard provisions of the permit to control trash discharges to the Los Angeles River and to apply the iterative approach set forth in the Part I.B. of the 2001 Permit in order to address the trash impairments in the Los Angeles River watershed. Yet, water quality impairments due to trash discharges from the MS4 to the Los Angeles River and its tributaries remain a serious public health and environmental problem.

Additionally, over the last 19 years, much has been learned about the nature of urban runoff and stormwater and BMP performance, both nationally and regionally. During the early years of the stormwater regulatory program, the State Board recognized that a prudent approach was one that implemented BMPs to reduce sources and control pollutants from MS4 and continued to collect monitoring data on the characteristics of urban runoff and stormwater (Order WQ 91-03). However, with extensive data on the characteristics of stormwater and BMP performance, numeric effluent limitations for discharges of trash have

⁸Comment letter from County of Los Angeles, Department of Public Works, May 15, 2000, p. 1.

become feasible since it is possible to determine a BMP equivalent of the numeric target.⁹

As noted above, the TMDL requires progressive annual reductions in the amount of trash that may be discharged from a jurisdiction in the watershed. Section 122.44(d)(1)(vii)(B) requires that NPDES permits include conditions that are “consistent with the assumptions and requirements” of available waste load allocations. Therefore, Staff reviewed the structure of the WLAs and the requirements of the Trash TMDL before crafting the proposal for incorporation. Based on the TMDL and the manner in which the waste load allocations are expressed, staff concluded that the most obvious and logical manner of incorporating the Trash WLAs would involve the adoption of conditions in the permit that require annual reductions in the amount of trash that may be discharged by each jurisdiction. By definition the specification of a limit on the quantity of a pollutant that may be discharged from a specific location is in fact a numerically expressed “effluent limitation”, as that term is defined in Water Code section 13385.1. While a variety of mechanisms might be considered to maneuver around the result, staff considers that the effect of any of those efforts would be to essentially water down the salient provisions of the TMDL to render them less- or unenforceable, beyond the current receiving water limitations and iterative approach that has not achieved compliance with water quality standards. Staff also considers the vast resources the Regional Board has devoted to this particular TMDL over the last 8 years with the intent of finally signaling the start to the end of the significant trash water quality problems that have been unresolved since the 1998 placement of the Los Angeles River on the 303(d) list.

In view of the above, Regional Board staff concludes that it is necessary and feasible to include the interim and final WLAs contained in the Los Angeles River Watershed Trash TMDL into the permit as numeric effluent limitations to ensure

⁹ For example, installation of full capture BMPs in forty percent of a responsible jurisdiction’s drainage area translates to a forty-percent reduction in the pre-assigned baseline waste load allocations. Since the

timely and measurable reductions in trash discharges to eliminate the existing water quality impairment. This is consistent with the recent State Board Order that concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based 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).

Potential Options for Trash WLA Compliance

The Regional Board has determined that these WLAs may be achieved in several ways. Compliance approaches for the trash TMDLs can be broadly classified into the "full capture" approach, "institutional controls," and the "partial capture" approach. These approaches can be applied individually or in combination throughout the watershed to meet TMDL requirements.

The full capture approach involves the installation of "full-capture"¹⁰ trash control systems in drainage areas of the affected watershed. All drainage areas where such an approach is employed are considered to be in compliance with the zero numeric target. This means that no further implementation actions are necessary, provided the system or device is appropriately sized for the subwatershed in which it is implemented and that it is properly maintained. This approach is consistent with the traditional storm water approach where dischargers are authorized to rely upon the use of best management practices. Full capture systems are specific structural best management practices that have been determined to meet the requirements of the TMDL. The use of such systems obviates the obligation on the part of the permittee to determine the actual amount of trash loading that the permittee may be causing, as compliance with

waste load allocations are assigned as percent reductions, they can be directly translated from BMP implementation.

¹⁰ For the purpose of the trash TMDLs, a full capture device is defined as "any single device or series of devices that traps all particles retained by a 5mm mesh screen with a design treatment capacity of \geq the peak flow rate resulting from a one-year, one-hour storm in the sub-drainage area."

the effluent limitations is determined by the fact of the installation and maintenance of the systems, not by the actual effluent quality.

Institutional controls are trash control measures taken by jurisdictional agencies that do not require any construction or installations. These are more typically referred to as “non-structural best management practices.” Examples include street sweeping, public education, and clean out of catch basins that discharge to storm drains. Since the efficacy of institutional controls cannot be accurately assessed with a measure of certainty, where compliance with the effluent limitations relies upon institutional controls it must be determined by a method that assesses the trash discharges and reductions that are actually occurring in the watershed. The TMDL specifies that this may be achieved by comparing the allowable discharge against the total estimated discharge of trash from storm events, using a mass-based equation.¹¹ Compliance is deemed to have been attained when the estimated discharge is equal to or less than the allowable load.

The partial capture approach involves the use of other structural trash control devices (best management practices) that do not meet the “full-capture” performance requirements. For the partial capture approach, the degree of compliance with the zero target is determined by the demonstrated performance of the devices in question.¹² Alternatively, where a device’s performance is not known, compliance can be determined in the same manner as that used for institutional controls.

¹¹ The discharge is estimated using a mass balance equation. Discharge = [DGR x Days since last street sweeping] - [trash obtained from catch basin cleanouts]. The DGR (daily generation rate) is the average amount of trash deposited within a specified drainage area over a 24-hour period. Annual re-calculation of the DGR is intended to serve as a measure of the effectiveness of institutional controls or source reduction measures.

¹² Performance must be demonstrated under different conditions (e.g. low to high trash loading).

Alternatives Considered

The Regional Board staff considered the following alternatives for making enforceable the Los Angeles River Trash TMDL WLAs.

a. No Action Option – Given the limited scope of the action, which is to progressively reduce the discharge of trash from the MS4 to the Los Angeles River and its tributaries, and the costs associated with non-action or non-enforcement of the Los Angeles River Trash WLAs, the proposed action is reasonable and necessary. Furthermore, the Los Angeles River Trash TMDL required compliance with the interim WLAs beginning in September 2008. The Regional Board is obligated by federal regulation (40 CFR 122.44(d)) to ensure that NPDES permits are consistent with the assumptions and requirements of any available waste load allocation and by state law to ensure that the provisions of the Basin Plan, including TMDLs, are implemented in waste discharge requirements (WDRs) (Wat. Code § 13263). Failing to incorporate the waste load allocations into the permit at this time would be contrary to the federal goal of making surface waters ‘fishable and swimmable’ and the legislative intent of the Porter-Cologne Water Quality Control Act to attain the highest water quality that is reasonable.

b. MS4 Storm Water Quality Management Program (SQMP) – An MS4 Storm Water Permittee’s SQMP is its primary documentation for utilizing the iterative adaptive approach using BMPs or other methods to manage the quality of storm water discharges in order to comply with receiving water limitations. MS4 Permittees in the Los Angeles River Watershed have had more than a decade and a half to effectively implement provisions of the permit to control trash discharges. The fact that discharges of trash to the Los Angeles River and its tributaries still cause or contribute to exceedances of water quality standards and impair beneficial uses, and that the Los Angeles River was first listed as impaired for trash on the 1998 303(d) list, that the Regional Board originally adopted WLAs for trash discharges in 2001, and re-adopted WLAs for trash discharges in

2007, demonstrates the need for greater action and strict enforcement of the WLAs. Permittees have not consistently submitted Receiving Water Limits Compliance Reports as required by the permit when there has been a determination of a violation of receiving water limitations (e.g., reported exceedances at permit monitoring stations), despite recurring exceedances of water quality standards. As noted earlier, few Permittees have documented revisions to the SQMP to address chronic exceedances of water quality standards. The existing iterative approach in the permit, which lacks enforceable milestones, would be inconsistent with the provisions and intent of the TMDL. Therefore this approach, which allows iterative yet enforceable compliance over a specific period of time is more appropriate

c. Incorporate TMDL Provisions at Permit Reissuance – Waiting until permit reissuance would prevent full implementation of the TMDL’s regulatory requirements for several years after compliance is required. Therefore, the Regional Board is reopening the existing permit during its administrative extension, instead of reissuing the permit at this time.

d. (Proposed Alternative) Limited Reopener to Incorporate WLAs as Numeric Effluent Limitations with Alternative Compliance Approaches – Federal regulation requires that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation (40 CFR 122.44(d)(1)(vii)(B)). State law requires both that the Regional Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply “any more stringent effluent standards or limitations necessary to implement water quality control plans...” (Wat. Code §§ 13263, 13377). The Ninth Circuit Court of Appeals in *Defenders of Wildlife v. Browner* ruled that the Clean Water Act grants the permitting agency discretion either to require “strict compliance” with water quality standards through the imposition of numeric effluent limitations, or to employ an iterative approach toward compliance with water quality standards, by requiring improved BMPs over time (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159). In a precedential decision, the State Board acknowledged that the holding in *Browner*

allows the issuance of MS4 permits that limit their provisions to BMPs that control pollutants to the MEP, and which do not require compliance with water quality standards. However, the State Board has concluded and the Regional Board agrees that "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" (Order WQ 2001-15, p. 8). In a recent decision, the State Board concluded that TMDLs should not be academic exercises, should be given substantive effect, and the regional boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of either numeric or non-numeric effluent limitations and should support their determination in the permit findings (Order WQ 2009-0008).

Regional Board staff concludes that in the case of the Trash TMDL, given its history, the resources devoted to its establishment, the continuing nature of the impairment, and the structure of the TMDL's waste load allocations, it is appropriate to establish effluent limitations that will result in measurable reductions in the pollutants discharged from the MS4 to receiving waters within a specified time frame, consistent with the TMDL's WLAs and implementation schedule.

Recommended Action

Staff recommends (d.) reopening the LA County MS4 permit in a limited manner to make modifications, including a new section, Part 7. Total Maximum Daily Load Provisions, to incorporate the Los Angeles River Trash WLAs, and revisions to Parts 4.F.5(b) (Standard Provisions) and 5 (Definitions). The changes are the addition of waste load allocations, for responsible jurisdictions identified in the Los Angeles River Watershed Trash TMDL, to achieve a progressive reduction in trash discharges from the MS4 to the Los Angeles River and its tributaries. Compliance with these WLA will address the impairment of beneficial uses that occurs as a result of these discharges.

The proposed modifications herein contain more specific requirements in the form of measurable interim and final effluent limitations to eliminate discharges of trash from the MS4 to the Los Angeles River and its tributaries in order to achieve water quality standards. This Order incorporates applicable WLAs that have been adopted by the Regional Board and have been approved by the State Board, Office of Administrative Law and the U.S. EPA. The conditions that implement the TMDL WLAs in the Order are expressed as effluent limitations in a manner consistent with the assumptions and requirements of the TMDL from which they are derived.

The re-opener provisions in Part 6.I.1 identify the authority and procedures for the Board to modify the permit. The proposed consideration by the Regional Board to incorporate the Los Angeles River Trash TMDL interim and final TMDL WLAs complies with these provisions and, specifically, with subparagraph (b) "to incorporate ... amendments to the Basin Plan". Per 40 CFR 122.62(a)(7) the Regional Board may reopen a permit when required by the "reopener" conditions in a permit.

Opportunity for Public Comment

Regional Board staff held a workshop on July 29, 2009, to inform Permittees and other interested persons how the Los Angeles River Trash TMDL will be incorporated into the LA MS4 Order. Comments were solicited during this workshop and up to two weeks following. These comments were considered by staff in formulating the draft permit modifications. Responses to these comments and comments received on the draft provisions, findings and fact sheet will be prepared prior to the Board hearing. In addition, the notice of the proposed Regional Board's proceedings to incorporate the Los Angeles River Watershed Trash TMDL's WLAs into the Los Angeles County MS4 Permit which was circulated on ~~September 30~~ October 8, 2009, provided a 30-day comment period for interested parties. The Regional Board Hearing on this matter, which is scheduled for December 10, 2009, provides further opportunity for stakeholders to comment.

APPENDIX 1

Table 1a: Los Angeles River Watershed Trash TMDL Waste Load Allocations per Storm Year, expressed as allowable discharge relative to baseline Waste Load Allocations (gallons of uncompressed volume)

| Permittee | End of Storm Year – September 30 | | | | |
|----------------------|----------------------------------|---------------|---------------|---------------|--------------|
| | 2010 (40%) | 2011 (30%) | 2012 (20%) | 2013 (10%) | 2014 (0%) |
| Alhambra | 15961 | 11971 | 7981 | 3990 | 0 |
| Arcadia | 20043 | 15032 | 10022 | 5011 | 0 |
| Bell | 6410 | 4808 | 3205 | 1603 | 0 |
| Bell Gardens | 5400 | 4050 | 2700 | 1350 | 0 |
| Bradbury | 1711 | 1283 | 855 | 428 | 0 |
| Burbank | 37036 | 27777 | 18518 | 9259 | 0 |
| Calabasas | 9002 | 6752 | 4501 | 2251 | 0 |
| Carson | 2733 | 2050 | 1366 | 683 | 0 |
| Commerce | 23493 | 17620 | 11747 | 5873 | 0 |
| Compton | 21276 | 15957 | 10638 | 5319 | 0 |
| Cudahy | 2374 | 1781 | 1187 | 594 | 0 |
| Downey | 15625 | 11719 | 7813 | 3906 | 0 |
| Duarte | 4884 | 3663 | 2442 | 1221 | 0 |
| El Monte | 16883 | 12662 | 8442 | 4221 | 0 |
| Glendale | 56126 | 42094 | 28063 | 14031 | 0 |
| Hidden Hills | 1465 | 1099 | 733 | 366 | 0 |
| Huntington Park | 7664 | 5748 | 3832 | 1916 | 0 |
| Irwindale | 4941 | 3706 | 2470 | 1235 | 0 |
| La Cañada Flintridge | 13398 | 10049 | 6699 | 3350 | 0 |
| Los Angeles | 549938 | 412454 | 274969 | 137485 | 0 |
| Los Angeles County | 124089 | 93067 | 62045 | 31022 | 0 |
| Lynwood | 11280 | 8460 | 5640 | 2820 | 0 |
| Maywood | 2452 | 1839 | 1226 | 613 | 0 |
| Monrovia | 18675 | 14006 | 9337 | 4669 | 0 |
| Montebello | 20148 | 15111 | 10074 | 5037 | 0 |
| Monterey Park | 15560 | 11670 | 7780 | 3890 | 0 |
| Paramount | 10981 | 8236 | 5490 | 2745 | 0 |
| Pasadena | 44799 | 33599 | 22400 | 11200 | 0 |
| Pico Rivera | 5581 | 4186 | 2791 | 1395 | 0 |
| Rosemead | 10922 | 8192 | 5461 | 2731 | 0 |
| San Fernando | 5579 | 4184 | 2789 | 1395 | 0 |
| San Gabriel | 8137 | 6103 | 4069 | 2034 | 0 |
| San Marino | 5756 | 4317 | 2878 | 1439 | 0 |
| Santa Clarita | 360 | 270 | 180 | 90 | 0 |
| Sierra Madre | 4644 | 3483 | 2322 | 1161 | 0 |
| Signal Hill | 3774 | 2830 | 1887 | 943 | 0 |
| Simi Valley | 55 | 41 | 27 | 14 | 0 |
| South El Monte | 6400 | 4800 | 3200 | 1600 | 0 |
| South Gate | 17562 | 13171 | 8781 | 4390 | 0 |
| South Pasadena | 5963 | 4472 | 2981 | 1491 | 0 |
| Temple City | 7029 | 5272 | 3514 | 1757 | 0 |
| Vernon | 18881 | 14161 | 9441 | 4720 | 0 |

Table 1b: Los Angeles River Watershed Trash TMDL Waste Load Allocations per Storm Year, expressed as allowable discharge relative to baseline Waste Load Allocations (pounds of drip-dry weight)

| Permittee | End of Storm Year – September 30 | | | | |
|----------------------|----------------------------------|---------------|---------------|---------------|--------------|
| | 2010 (40%) | 2011 (30%) | 2012 (20%) | 2013 (10%) | 2014 (0%) |
| Alhambra | 27504 | 20628 | 13752 | 6876 | 0 |
| Arcadia | 37214 | 27911 | 18607 | 9304 | 0 |
| Bell | 10135 | 7601 | 5067 | 2534 | 0 |
| Bell Gardens | 9348 | 7011 | 4674 | 2337 | 0 |
| Bradbury | 4864 | 3648 | 2432 | 1216 | 0 |
| Burbank | 68156 | 51117 | 34078 | 17039 | 0 |
| Calabasas | 20892 | 15669 | 10446 | 5223 | 0 |
| Carson | 4083 | 3062 | 2042 | 1021 | 0 |
| Commerce | 34192 | 25644 | 17096 | 8548 | 0 |
| Compton | 34542 | 25907 | 17271 | 8636 | 0 |
| Cudahy | 4024 | 3018 | 2012 | 1006 | 0 |
| Downey | 27403 | 20552 | 13701 | 6851 | 0 |
| Duarte | 9475 | 7106 | 4737 | 2369 | 0 |
| El Monte | 27307 | 20480 | 13653 | 6827 | 0 |
| Glendale | 117399 | 88049 | 58700 | 29350 | 0 |
| Hidden Hills | 4328 | 3246 | 2164 | 1082 | 0 |
| Huntington Park | 12372 | 9279 | 6186 | 3093 | 0 |
| Irwindale | 7164 | 5373 | 3582 | 1791 | 0 |
| La Cañada Flintridge | 29499 | 22124 | 14749 | 7375 | 0 |
| Los Angeles | 1029000 | 771750 | 514500 | 257250 | 0 |
| Los Angeles County | 260722 | 195542 | 130361 | 65181 | 0 |
| Lynwood | 18587 | 13940 | 9293 | 4647 | 0 |
| Maywood | 4220 | 3165 | 2110 | 1055 | 0 |
| Monrovia | 40395 | 30296 | 20198 | 10099 | 0 |
| Montebello | 33483 | 25112 | 16741 | 8371 | 0 |
| Monterey Park | 28182 | 21137 | 14091 | 7046 | 0 |
| Paramount | 17796 | 13347 | 8898 | 4449 | 0 |
| Pasadena | 83006 | 62254 | 41503 | 20751 | 0 |
| Pico Rivera | 9020 | 6765 | 4510 | 2255 | 0 |
| Rosemead | 18951 | 14213 | 9476 | 4738 | 0 |
| San Fernando | 9231 | 6923 | 4615 | 2308 | 0 |
| San Gabriel | 14575 | 10931 | 7287 | 3644 | 0 |
| San Marino | 11659 | 8744 | 5829 | 2915 | 0 |
| Santa Clarita | 930 | 698 | 465 | 233 | 0 |
| Sierra Madre | 10077 | 7558 | 5038 | 2519 | 0 |
| Signal Hill | 5688 | 4266 | 2844 | 1422 | 0 |
| Simi Valley | 138 | 103 | 69 | 34 | 0 |
| South El Monte | 9728 | 7296 | 4864 | 2432 | 0 |
| South Gate | 28933 | 21700 | 14467 | 7233 | 0 |
| South Pasadena | 11343 | 8507 | 5671 | 2836 | 0 |
| Temple City | 12728 | 9546 | 6364 | 3182 | 0 |
| Vernon | 26726 | 20044 | 13363 | 6681 | 0 |

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Comments Received After Public Workshop

| | |
|--|--------|
| 1. City of Arcadia | 14-58 |
| 2. City of Artesia | 14-60 |
| 3. City of Bellflower | 14-65 |
| 4. City of Bell Gardens | 14-70 |
| 5. City of Carson | 14-76 |
| 6. City of Claremont | 14-81 |
| 7. City of Commerce | 14-85 |
| 8. City of Downey (7/21/09) | 14-89 |
| 9. City of Downey (7/28/09) | 14-95 |
| 10. City of Duarte | 14-101 |
| 11. City of Gardena | 14-107 |
| 12. City of Inglewood | 14-110 |
| 13. City of LaCanada Flintridge | 14-115 |
| 14. City of Monrovia | 14-120 |
| 15. City of Pico Rivera | 14-130 |
| 16. City of Rosemead | 14-137 |
| 17. City of San Gabriel | 14-143 |
| 18. City of Signal Hill (7/23/09) | 14-147 |
| 19. City of Signal Hill (7/29/09) | 14-153 |
| 20. City of Vernon | 14-158 |
| 21. City of West Covina | 14-163 |
| 22. City of Whittier | 14-168 |
| 23. County of Los Angeles, DPW | 14-173 |
| 24. Charles Abbott Associates, Inc | 14-176 |
| 25. Heal the Bay | 14-181 |
| 26. Los Angeles Stormwater Quality Partnership (LASQP) | 14-185 |
| 27. Richards/Watson/Gershon | 14-195 |
| 28. Santa Monica Baykeeper | 14-199 |
| 29. Rutan, Attorneys at Law | 14-202 |

City of Arcadia



City of Arcadia

Office of the City Manager

Donald Penman
City Manager

July 22, 2009

Ivar Ridgeway ✓
Storm Water Permitting Unit
CRWQCB, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

2009 JUL 27 AM 10

SUBJECT: MODIFICATIONS TO WASTE DISCHARGE REQUIREMENTS FOR
(NPDES NO. CAS004001) TO INCORPORATE PROVISIONS OF
THE LOS ANGELES RIVER WATERSHED TRASH TOTAL
MAXIMUM DAILY LOAD (TMDL)

Dear Mr. Ridgeway:

The City of Arcadia is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of Arcadia acknowledged that on August 9, 2007 the Regional Board adopted the Los Angeles River Watershed Trash TMDL. Therefore, we have made great efforts to improve water quality in support of the Trash TMDL objective. Specifically, we have installed 108 full capture catch basin inserts in City owned Catch Basins. Additionally, we will continue to install full capture devices to prevent pollution of the Los Angeles River.

Our City takes pride in its environmental programs and values the importance of decreasing the amount of trash discharges into the storm drain system in order to protect the recreation and aquatic life in the Los Angeles River Watershed. Despite the economic recession and the difficulty that our City is having in funding basic municipal services, the City continues making great efforts in implementing both TMDL and NPDES permit programs. All of our efforts have been made without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limits. We believe that the Board should use a more collaborative approach with cities to achieve the desired environmental outcome.

We would also like the Regional Board to consider the cost associated with Trash TMDL BMPs. Since the City has implemented Full Capture Catch Basin Devices, we are now struggling to generate revenue to fund additional expenses in maintaining these devices. Although the County of Los Angeles cleans the catch basins once annually, this is not enough. We also perform street sweeping on a weekly basis in order to enhance the effectiveness of the catch basin inserts. However, as with all pollution prevention programs, costs will continue to increase as state mandates become more stringent.

The City of Arcadia supports trying to decrease the amount of trash entering the storm drain system, but would like the Regional Board to reconsider placing the Trash TMDL in the LA County MS4 permit. We look forward to participating in the Board's ongoing efforts and hope that our concerns will be considered. Please feel free to contact Carmen Trujillo, Management Aide at (626) 256-6551 if you have any questions or comments.

Sincerely,

Donald Penman

240 West Huntington Drive
Post Office Box 60021
Arcadia, CA 91066-6021
(626) 574-5401
(626) 446-5729 Fax

City of Artesia

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 21, 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Artesia is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Although our City is not located in the Los Angeles River watershed, we are providing comments based on the precedent that this action would set for our TMDLs. The public notice for the NPDES permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, the San Gabriel River and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The costs are estimated by the Regional Water Board the hundreds of millions and several billion dollars for our Region. For example, the Board staff estimated that compliance costs will range between \$2.1 million and \$2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the costs, the Los Angeles River Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into the NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic

recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in “rare instances.”

“EPA’s policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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.” (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the “rare instances” which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- “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 limits.” (State Board Order WQ 98-01, pg. 12)
- “Federal regulations do not require numeric effluent limitations for discharges of stormwater.” (State Board Order WQ 2006-0012, pg 17)
- “It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers.” (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

TMDL MOAs could include appropriate Basin Plan Tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Our City takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of the municipal NPDES permit to insert the TMDLs. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,

CITY OF ARTESIA:



Mr. C. A. Alba, PE, PLS
City Engineer

cc: Ms. Maria Dadian, City Manager

City of Bellflower

The City of Bellflower

Families. Businesses. Futures.

16600 Civic Center Drive, Bellflower, CA 90706

Tel 562.804.1424 Fax 562.925.8660 www.bellflower.org



July 22, 2009

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

Re: Incorporating the Los Angeles River Trash TMDL into the County of Los Angeles Municipal Stormwater Discharge Permit (Permit No. CAS004001)

Dear Mr. Ridgeway:

The City of Bellflower is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the County of Los Angeles Municipal Stormwater Discharge Permit (NPDES Permit). Although our City is not located in the Los Angeles River watershed, we are providing comments based on the precedent that this action would set for TMDLs in the San Gabriel River watershed. The public notice for the NPDES Permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under State or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, San Gabriel River, and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs as strict, never-to-be-exceeded, numeric limits.

Page 1 of 4

Ray T. Smith
Mayor

Raymond Dunton
Mayor Pro Tem

Randy Bomgaars
Council Member

Dan Koops
Council Member

Scott A. Larsen
Council Member

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11-87

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities (League), an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff.

TMDL implementation is a daunting and costly task for local government. The costs estimated by the Los Angeles Regional Water Quality Control Board (Regional Board) are in the hundreds of millions for our region. For example, Regional Board staff estimated that compliance costs will range between \$2.1 million and \$2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the high costs of TMDL implementation, the Los Angeles River watershed communities are currently investing over \$6 million in scientific studies alone in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Regional Board's need to place numeric limits into the NPDES Permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Regional Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES permit program from EPA over two decades ago. Both EPA policies and State law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor State law provisions require the imposition of numeric limits on municipal urban runoff. Specific State law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic

recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through the NPDES Permit.

The State Water Resources Control Board (State Board) issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into the NPDES Permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES Permit, instead of placing the TMDL into the permit. The Regional

Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

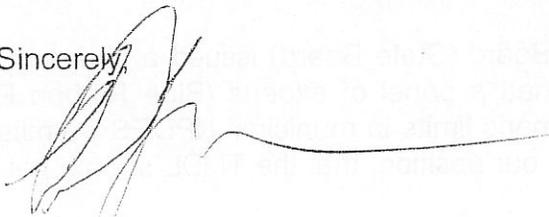
Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

TMDL MOAs could include appropriate Basin Plan tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOAs could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Our City takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of NPDES Permit to insert the TMDLs. We believe that the Regional Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,



Michael J. Egan
City Manager

cc: City Council
City Attorney

Doc 206042

City of Bell Gardens



CITY OF BELL GARDENS

PUBLIC WORKS DEPARTMENT

8327 GARFIELD AVENUE • BELL GARDENS, CALIFORNIA 90201-6122
(562) 806-7770 FAX (562) 806-7789 • WWW.CI.BELL-GARDENS.CA.US

July 23, 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Bell Gardens is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as numeric effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation to be enforced as a numeric limit in a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to

implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, not-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the yet to be developed Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of these costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

As evidence of the variable nature of urban runoff and the limited understanding of how to best reduce the discharge of pollutants from urban runoff, even more recently developed devices necessary to capture trash are undergoing frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) seeks to hold the cities responsible for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit,

especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Sections 13241 and 13000). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits, particularly when doing so goes beyond what is required under federal law.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads to the maximum extent practicable standard. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL's numeric limits should not be placed into our NPDES permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater, June 19, 2006, pg. 8*)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this regard by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing numeric limits into the municipal NPDES permits. While this may be the preference of individual US EPA staff in Region IX, and may also be the goal of environmental organizations, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

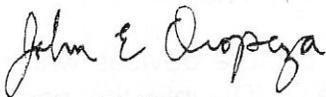
TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

The Trash TMDL could be generally incorporated into a Municipal NPDES Permit by referencing the need to utilize MEP-compliant BMPs to strive to reach the Waste Load Allocation. More specific implementation measures, however, can if

needed by developed through a Memorandum of Agreement (MOA) between the Regional Board and the Cities involved that will more specifically address the particular means of implementing the TMDL, i.e., it will identify the particular MEP-compliant BMPs that will be utilized, over a negotiated implementation schedule, to achieve deemed compliance with the TMDL. The Trash TMDL MOA thus could include a detailed implementation plan of action to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other consequences should the City fail to comply. The MOAs also could include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. In this time of economic uncertainty and limited governmental resources, the Board and the cities must think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

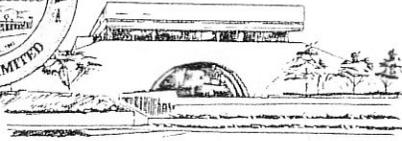
Sincerely,



John E. Oropeza
Director of Public Works

cc: G. Steve Simonian, City Manager

City of Carson



CITY OF CARSON

July 23 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The city of Carson is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since

14-77

reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of the costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In an example of the variable nature of urban runoff, even the devices necessary to capture trash undergo frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in “rare instances.”

“EPA’s policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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.” (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the “rare instances” which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- “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 limits.” (State Board Order WQ 98-01, pg. 12)
- “Federal regulations do not require numeric effluent limitations for discharges of stormwater.” (State Board Order WQ 2006-0012, pg 17)
- “It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers.” (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Mr. Ivar Ridgeway

July 23, 2009

Page 4 of 4

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing them into the municipal NPDES permits. While this may be the preference of US EPA staff in Region IX, and may also be the goal of environmental attorneys, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Water Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

A Trash TMDL MOA could include Basin Plan Tables 7-2-1, 7-2-2 and 7-2-3, which set forth the provisions of the Los Angeles River Trash TMDL. It also could include a detailed plan of actions to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. This time of economic uncertainty and limited governmental resources calls for the Board and the cities to think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



Jerome G. Groomes
City Manager

City of Claremont

**CITY OF CLAREMONT**

Community Development Department

City Hall
207 Harvard Avenue
P.O. Box 880
Claremont, CA 91711-0880
FAX (909) 399-5327
www.ci.claremont.ca.us

Building • (909) 399-5471
Planning • (909) 399-5470
Engineering • (909) 399-5465
Community Improvement • (909) 399-5467
Administration • (909) 399-5464

July 24, 2009

Via Facsimile 213.576.6640

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

Dear Mr. Ridgeway:

Comments in Regard to Incorporation of the Trash TMDL
Into Current Los Angeles County MS4 Permit

The City of Claremont is pleased to submit comments to the Los Angeles Regional Water Quality Control Board (Regional Board) regarding its plan to incorporate the trash TMDLs for Ballona Creek and the Los Angeles River into the current Los Angeles County municipal NPDES permit (MS4 permit). The City is compelled to oppose this proposition because of the following reasons:

1. The reissuance of the current MS4 permit is long overdue by some two and one-half years. Using the current MS4 permit to admit TMDLs would only cause a further delay its adoption. As you know, the MS4 permit was adopted in December of 2001 and was scheduled to expire 5 years from that date. The 5 year term of the MS4 permit is specified under federal storm water regulations. Our understanding is that the State must also honor this requirement, we defer to the legal comments on this matter submitted to you from the Coalition for Practical Regulation (CPR).
2. The Regional Board's desire to incorporate the trash TMDLs into the current MS4 permit suggests that it will take even longer for the new MS4 to be issued. The City sees no reason why the Regional Board should not commit to beginning discussions with affected cities on reissuing the MS4 permit immediately – especially given that it had recently adopted the Ventura County MS4 permit; and that the Regional Board had stated earlier that it would begin work on re-issuing the Los Angeles County MS4 permit after adopting the Ventura MS4 permit. Our not so worse-case concern is that it may take 5 years to adopt the long over due MS4 permit. Further, the

Mr. Ivar Ridgeway
July 24, 2009
Page 2 of 3

Regional Board has not provided a reason as to why it cannot start work now on adopting the new MS4 permit.

Indeed it is in the interest of all affected parties to reissue the MS4 permit as soon as possible. The new permit would enable permittees to implement low impact development (LID) strategies designed to facilitate groundwater recharge; reduce runoff flow from new developments; treat runoff through infiltration; and reduce the need for conventional storm drain/flood control facilities. LID would also facilitate compliance with total maximum daily load (TMDL) waste load allocations (WLA) for several pollutants including bacteria, metals, and nutrients. These new requirements would also facilitate compliance with some TMDLs.

The new permit would also correct several of the deficiencies associated with the current permit, including but not limited to: (i) eliminating an incorrect definition of illicit connections that has resulted in the under-reporting of such discharges; (ii) adding nurseries as a new commercial establishment that has been determined to be a significant contributor of pollutants; (iii) adding NAICS, in addition to SIC, as an industrial classification code system that would enable permittees to more easily determine facilities that are subject to industrial and commercial inspections; (iv) providing clearer expectations regarding best management practices (BMPs) for various categories of construction sites; and (v) providing clearer expectations for preparing and completing annual reports. All of these new features, which are likely to be incorporated into the next permit, would obviously facilitate compliance with existing stormwater regulations and, thereby, improve stormwater quality.

3. There is no reason to incorporate the trash TMDL into the current MS4 Permit. The regional board could, in the alternative, require municipal permittees to install catch basin debris exclusion controls in industrial and commercial areas during the five year permit as it did in the recently adopted Ventura MS4 permit.
4. Using the existing MS4 permit to admit TMDLs is inefficient and cost ineffective. Each time the MS4 permit is re-opened, the State is required to expend critically limited resources to amend the basin plan, a process that includes scheduling one or more workshops and public hearings before adoption. And, if the re-opener is challenged administratively and legally, the State would have to allocate additional staff already stressed by furloughs and use funds to pay for legal services at a time when the State budget is already in crisis.
5. A recent study commissioned by USEPA through the National Academy of Sciences on Urban Stormwater Management in the United States has concluded that the stormwater program in general, and TMDLs in particular, are in need of correction. One of the contributors to this study is Dr. Xavier Swamikannu, currently the stormwater chief for the Regional Board. The study concluded that the TMDL program should be replaced. It states: "... the technical demands of the TMDL

Mr. Ivar Ridgeway
July 24, 2009
Page 3 of 3

program make for a particularly bad fit with the technical impediments already present in monitoring and managing stormwater."¹

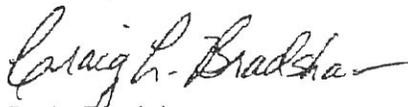
Monitoring for stormwater is a challenge in itself. This is because "pollutant loadings in stormwater effluent vary dramatically over time and stormwater is notoriously difficult to monitoring for pollutants."² This makes it is almost impossible to understand to what extent a stormwater point source contributes to degrading a water body. Such a limitation complicates not only formulating a TMDL but also assuring that the TMDL will meet the water quality standard for which it was contrived. The study offered, in the alternative, a watershed-based permitting approach that focuses on volume reduction controls and protecting the biological integrity of the nation's waters.³

Although the City is not sufficiently convinced that the NRC study's alternative is desirable it does believe that the TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numeric limitations that may not improve water quality standards and the uses for which they were established to protect.

In conclusion, the City asks the Regional Board to not include any TMDL in the current or future MS4 permit. Instead, it proposes the following: fast track adopting the new MS4 permits for Los Angeles County and include a provision that calls for the installation of trash exclusion controls similar to what is in the recently adopted Ventura MS4 permit.

Should you have any questions, please contact me at (909) 399-5465.

Sincerely,



Craig Bradshaw
City Engineer

¹Urban Stormwater Management in the United States, *The National Research Council of the National Academies*, 2008, page 51.

²*Ibid.*, page 52.

³*Ibid.*, page 40.

City of Commerce



City of Commerce

Community Development Department

Bob Zarrilli
Director

July 23, 2009

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

Subject: Comments In Re: Incorporation of the Trash TMDL into the Current
Los Angeles County MS4 Permit

Dear Mr. Ridgeway:

The City of Commerce is pleased to submit comments to the Los Angeles Regional Water Quality Control Board (Regional Board) regarding its plan to incorporate the trash TMDLs for Ballona Creek and the Los Angeles River into the current Los Angeles County municipal NPDES permit (MS4 permit). The City is compelled to oppose this proposition because of the following reasons:

1. The reissuance of the current MS4 permit is long overdue by some 2-and-a-half years. Using the current MS4 permit to admit TMDLs would only cause a further delay its adoption. As you know, the MS4 permit was adopted in December of 2001 and was scheduled to expire 5 years from that date. The 5 year term of the MS4 permit is specified under federal stormwater regulations. Our understanding is that the State must also honor this requirement (we defer to the legal comments on this matter submitted to you from the Coalition for Practical Regulation (CPR)).
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2535 Commerce Way
Commerce, CA 90040
Phone: 323•722•4805
Fax: 323•888•6537

concern is that it may take 5 years to adopt the long over due MS4 permit. Further, the Regional Board has not provided a reason as to why it cannot start work now on adopting the new MS4 permit.

In deed it is in the interest of all affected parties to reissue the MS4 permit as soon as possible. The new permit would enable permittees to implement low impact development (LID) strategies designed to facilitate groundwater recharge; reduce runoff flow from new developments; treat runoff through infiltration; and reduce the need for conventional storm drain/flood control facilities. LID would also facilitate compliance with total maximum daily load (TMDL) waste load allocations (WLA) for several pollutants including bacteria, metals, and nutrients. These new requirements would also facilitate compliance with some TMDLs.

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Monitoring for stormwater is a challenge in itself. This is because "pollutant loadings in stormwater effluent vary dramatically over time and stormwater is notoriously difficult to monitoring for pollutants."¹ This makes it is almost impossible to understand to what extent a stormwater point source contributes to degrading a water body. Such a limitation complicates not only formulating a TMDL but also assuring that the TMDL will meet the water quality standard for which it was contrived. The study offered, in the alternative, a watershed-based permitting approach that focuses on volume reduction controls and protecting the biological integrity of the nation's waters.

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In conclusion, the City asks the Regional Board to not include any TMDL in the current or future MS4 permit. Instead, it proposes the following: fast track adopting the new MS4 permits for Los Angeles County and include a provision that calls for the installation of trash exclusion controls similar to what is in the recently adopted Ventura MS4 permit.

Should you have any questions, please contact me.

Sincerely,


Bob Zarrilli

City of Downey

July 21, 2009



City of Downey

FUTURE UNLIMITED

July 21, 2009

CITY COUNCIL

MAYOR

Dr. MARIO A. GUERRA

MAYOR PRO TEM

ANNE M. BAYER

COUNCIL MEMBERS

LUIS H. MARQUEZ
ROGER C. BROSSMER
DAVID R. GAFIN

CITY MANAGER

GERALD M. CATON

CITY CLERK

KATHLEEN L. MIDSTOKKE

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

**Re: Incorporating the Trash TMDL into the MS4 Permit
(Case No. CAS004001)**

Dear Mr. Ridgeway:

The City of Downey is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit.

Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of the costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

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In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

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"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

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The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing them into the municipal NPDES permits. While this may be the preference of US EPA staff in Region IX, and may also

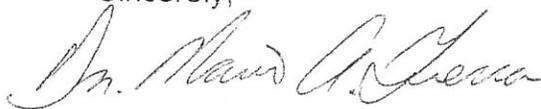
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TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

A Trash TMDL MOA could include Basin Plan Tables 7-2-1, 7-2-2 and 7-2-3, which set forth the provisions of the Los Angeles River Trash TMDL. It also could include a detailed plan of actions to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. This time of economic uncertainty and limited governmental resources calls for the Board and the cities to think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



Dn. Mario A. Guerra
Mayor

City of Downey

July 28, 2009

City of Downey

FUTURE UNLIMITED

July 28, 2009

CITY COUNCIL

MAYOR

Dr. MARIO A. GUERRA

MAYOR PRO TEM

ANNE M. BAYER

COUNCIL MEMBERS

LUIS H. MARQUEZ
ROGER C. BROSSMER
DAVID R. GAFIN

CITY MANAGER

GERALD M. CATON

CITY CLERK

KATHLEEN L. MIDSTOKKE

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

Re: Modification of the Los Angeles County Municipal Separate Storm Sewer System (MS4) to Incorporate Los Angeles River Trash Total Maximum Daily Load (TMDL)

Dear Mr. Ridgeway:

The City of Downey is in receipt of the July 6, 2009 Los Angeles Regional Water Quality Control Board (LARWQCB) notice regarding a Public Workshop to discuss modification of Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit to incorporate the Los Angeles River Trash Total Maximum Daily Load (LAR TTMDL). For the following reasons, we request that the Board focus its limited resources to other priority issues and defer this initiative until such time as the Board has completed its Basin Plan Revision and is prepared to reissue the 2001 MS4 Permit for municipalities in Los Angeles County and other NPDES Permits.

Modification should follow revision of the Los Angeles County catch basin policy: As recently as the July 15, 2009 Los Angeles River Watershed Management Committee meeting, the County of Los Angeles, Department of Public Works representative reiterated the intent of their agency to adopt crucial revisions to its policy regarding the installation of Best Management Practices (BMPs) in County owned and maintained catch basins. Previous representations about the content of the revised policy, suggest it would significantly reduce the permitting, maintenance, flood risk management, and future resource concerns of our agency in relationship to this state mandated and underfunded TMDL. By modifying the expired permit before the County policy revision, the Board is forcing cities to install BMPs under unfavorable existing County policies or face potential MS4 Permit enforcement measures. Alternatively, the modification could delay enforcement until this revision and other issues have been resolved.

After Expiration, Permit Modification Requires Adoption of a New Permit: The 2001 MS4 Permit (Board Order 01-182) included finding G.8: *This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.* This finding limits the duration for permit modification to before December 13, 2006, after which further

modifications are meant to be addressed through adoption of a new permit. An expansive interpretation would have resulted from excluding the phrase "prior to its expiration date", so a more limited interpretation is warranted by the inclusion of the phrase.

State Introduced Local Resource Limitations: As exemplified by the City of Downey presentation on the North City Hall Parking Lot project, during the Public Forum item of the Board's July 16, 2009 meeting, we are voluntarily implementing projects and programs that are reducing the discharge of pollutants from our community, despite a recession that has reduced staffing levels and strains the provision of basic municipal services, including public safety. We have supported and implemented many other TMDL elements without their inclusion in the 2001 MS4 permit. Reopening the permit to insert this TMDL, with its numeric limitations, will create a regrettable precedent, within days of the State having adopted a budget retroactively stripping an estimated \$5.2 million from a previously adopted City budget, which was already dependent on the expenditure of City reserves. We urge the Board to consider more resource sensitive and collaborative approaches to achieving our shared environmental outcomes.

Cumulative Regulatory Impacts: Dozens of TMDLs have been adopted by the Board and many more, which will impact the City of Downey, are planned for Board consideration over the next decade. We are being inundated with TMDLs for Copper, Lead, Zinc, and Indicator Bacteria in the Rio Hondo and Los Angeles Rivers; Copper, Lead, Zinc, Indicator Bacteria, Chlordane, Trash, and Phthalates in the Los Cerritos Channel; Cyanide, Copper, Lead, Nickel, Dioxin, pH, Indicator Bacteria, and Oxygen Demand on the San Gabriel River. Existing TMDLs are proving difficult and costly to understand, implement, and in some cases unnecessary (e.g. recent 303(d) list deletions, Site Specific Objective Water Effect Ratios, CTR recalculations). Identifying the diffuse urban sources of stormwater pollutants is also scientifically challenging as conveyed by the recent Board adoption of a 303(d) listing for "Toxicity" in the Rio Hondo.

Controlling sources of pollutants is a daunting and costly task that is often beyond the reach of local agencies, as has become apparent during the effort to legislate reformulation of friction pad to reduce copper or ban the use of lead wheel weights. The Regional Water Board has estimated the local government compliance cost of this Trash TMDL to be in the hundreds of millions of dollars. Regional Board cost estimates for the Los Angeles River Metals TMDL are in the billions and with comparable costs likely for the Indicator Bacteria TMDLs. The Los Angeles River Watershed communities have already committed over \$6 million in scientific studies to better understand the science, monitoring and implementation needed to reduce metals and bacteria in the Los Angeles River. Cumulatively introduced into our MS4 Permit(s) as strict, not-to-be-exceeded, numeric limits, these water quality objectives have the potential to overwhelm the source control and enforcement resources of both the City and Regional Boards.

There is No Federal Authority Forcing Incorporation of Numeric Effluent Limits in MS4 NPDES Permits: The Workshop notice asserts that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, those regulations do not require waste allocations in MS4 NPDES permits to be expressed as numeric effluent limits. We know of no authority or

requirement under state or federal law that compels incorporation of TMDL waste load allocations as numeric limits in an enforceable municipal NPDES permit provision. To the contrary, on November 22, 2002 EPA provided a NPDES Permit guidance memorandum.

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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."
(EPA Guidance Memo, Page 4.)

There is No State Authority Forcing Incorporation of Numeric Effluent Limits in MS4 NPDES Permits: The Regional Board established an unfortunate trash control precedent in the 2001 MS4 Permit by requiring street sweeping and placement of trash receptacles at transit stops. Since then, the Board has approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing numeric effluent limits from the TMDL into the permit. State law does not require the imposition of numeric limits in municipal urban runoff. State law includes the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Sections 13241 and 13000). Given that other state issued General NPDES permits (e.g. Industrial and Construction) do not include TMDL derived numeric limits for Trash, there is no reason to modify the 2001 MS4 Permit to include these limits at this time, and if you were to do so, enforcement should be deferred until similar applicable provisions have been inserted into these much more dated State permits. Since the board cannot distinguish between trash from construction, industrial and municipal Permittees, the TMDL objectives remain unenforceable. We strongly believe that based on recent State commission staff recommendations, court decision, and, most importantly, the current statewide economic recession, that the Regional Board reconsider whether voluntarily modifying the current MS4 Permit to include numeric limits is required by federal and state law.

The Efficacy of Trash Control BMPs Does Not Warrant a Zero Discharge Standard: Trash retention technologies are still maturing as evidenced by the full capture certified BMPs recognized by the Board. Initially this TMDL anticipated the installation of Continuous Deflection System (CDS) devices. These proved to be expensive and difficult to install with there own adverse environmental impacts. Since then, local municipalities have invested significant resources in testing other "full" and "partial" capture devices, but they continue to evolve in an "iterative" cycle of invention and evaluation. Applying strict numeric limits at this time, exposes our City to unnecessary risks from both Regional Board fines and third-party litigation. The Board should consider other implementation mechanisms and pollutant control strategies that encourage continued participation and progress, by eliminating more sources of trash.

Statewide Observations on Placing Numeric Standards in MS4 Permits: Like many cities in the Los Angeles River Watershed, Downey is one of the over 450 member League of California Cities. The League has long opposed

the inclusion of numeric effluent limits in MS4 permits, partially because of the variable nature of stormwater and lack of analytical confidence, but also as both the difficulty and costs of controlling runoff. The League has urged water boards to craft NPDES permits that rely on the use of BMPs to the Maximum Extent Practicable (MEP) to reduce pollutants from urban runoff. (See the League's *Guiding Principles - 2008* and *Final Report of the Water Quality Regulatory Task Force - 2003*.)

The State Water Resources Control Board, through Orders and by commissioning a panel of experts (Blue Ribbon Panel), has provided directions favoring the use of BMPs in municipal NPDES permits over imposing numeric limits, as demonstrated by the following observations:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg 8)

Alternative Recommendations for TMDL Implementation: Although TMDLs are not self-implementing, EPA policies provide several alternatives to placing numeric effluent limits into MS4 Permits. One, is the third-party Memoranda of Agreement (MOA) development process. The Los Angeles Region Board and EPA have already entered into a MOA with the City of Los Angeles, with technical assistance from Downey, to develop a Bacteria TMDL for the Los Angeles River (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST).

The Trash TMDL could be incorporated into our next MS4 Permit by referencing the need to utilize MEP-compliant BMPs to achieve our Waste Load Allocation. Implementation measures and schedules could then be developed through a Memorandum of Agreement (MOA) between the Regional Board and the individual Cities. This would reflect the pollutant (trash) generation characteristics and implementation (methods and schedules) objectives of the particular municipality. The TMDL MOA would also identify financial consequences should the City fail to comply. The MOA could also include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

The Los Angeles River Watershed Permittees believe that the Board has the discretion to choose how to implement TMDLs; hopefully to create a successful litigation free model. The City of Downey is ready to participate in developing a TMDL MOA with the Regional Board. During this time of economic

Mr. Ivar Ridgeway
July 28, 2009, Page 5 of 5

upheaval, at all levels of government, the Board and the cities must find a better way of accomplishing our mutually shared goal of improving water quality.

Sincerely,

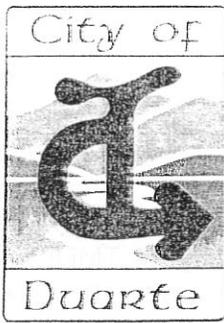


Dn. Mario A. Guerra
Mayor

MAG:sc

H:/citycouncil/sconte/lettersofrecommendation/LARWQCB ltr re MS4 Storm Sewer System Permit

City of Duarte



City of Duarte

1600 Huntington Drive, Duarte, CA 91010 - (626) 357-7931 - FAX (626) 358-0018

July 23, 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Duarte is partially located within the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as numeric effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation to be enforced as a numeric limit in a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, not-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the yet to be developed Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of these costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

As evidence of the variable nature of urban runoff and the limited understanding of how to best reduce the discharge of pollutants from urban runoff, even more recently developed devices necessary to capture trash are undergoing frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) seeks to hold the cities responsible for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional

Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Sections 13241 and 13000). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits, particularly when doing so goes beyond what is required under federal law.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads to the maximum extent practicable

standard. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL's numeric limits should not be placed into our NPDES permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg. 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this regard by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

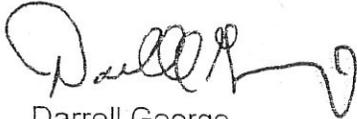
We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing numeric limits into the municipal NPDES permits. While this may be the preference of individual US EPA staff in Region IX, and may also be the goal of environmental organizations, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

The Trash TMDL could be generally incorporated into a Municipal NPDES Permit by referencing the need to utilize MEP-compliant BMPs to strive to reach the Waste Load Allocation. More specific implementation measures, however, can if needed be developed through a Memorandum of Agreement (MOA) between the Regional Board and the Cities involved that will more specifically address the particular means of implementing the TMDL, i.e., it will identify the particular MEP-compliant BMPs that will be utilized, over a negotiated implementation schedule, to achieve deemed compliance with the TMDL. The Trash TMDL MOA thus could include a detailed implementation plan of action to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other consequences should the City fail to comply. The MOAs also could include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. In this time of economic uncertainty and limited governmental resources, the Board and the cities must think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



Darrell George
City Manager

cc: City Council
City Attorney
Mr. Richard Montevideo, Esq
Department Heads



PAUL K. TANAKA, Mayor
STEVEN C. BRADFORD, Mayor Pro Tem
RONALD K. IKEJIRI, Councilmember
RACHEL C. JOHNSON, Councilmember
DAN MEDINA, Councilmember

1700 WEST 162nd STREET / GARDENA, CALIFORNIA 90247-3778 / PHONE (310) 217-9505

CITY of GARDENA OFFICE OF THE CITY MANAGER

July 27, 2009

TASHA CERDA, City Clerk
J. INGRID TSUKIYAMA, City Treasurer
MITCHELL G. LANSDALL, City Manager
PETER L. WALLIN, City Attorney

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

Fax No. 213/576-6640

Subject: Comments In Re: Incorporation of the Trash TMDL
into the Current Los Angeles County MS4 Permit

Dear Mr. Ridgeway:

The City of Gardena is pleased to submit comments to the Los Angeles Regional Water Quality Control Board (Regional Board) regarding its plan to incorporate the trash TMDLs for Ballona Creek and the Los Angeles River into the current Los Angeles County municipal NPDES permit (MS4 permit). The City is compelled to oppose this proposition because of the following reasons:

1. The reissuance of the current MS4 permit is long overdue by some 2-and-a-half years. Using the current MS4 permit to admit TMDLs would only cause a further delay its adoption. As you know, the MS4 permit was adopted in December of 2001 and was scheduled to expire 5 years from that date. The 5 year term of the MS4 permit is specified under federal stormwater regulations. Our understanding is that the State must also honor this requirement (we defer to the legal comments on this matter submitted to you from the Coalition for Practical Regulation (CPR)).
2. The Regional Board's desire to incorporate the trash TMDLs into the current MS4 permit suggests that it will take even longer for the new MS4 to be issued. The City is unclear as to why it is taking so long for the Regional Board to adopt the new permit. It sees no reason why the Regional Board should not commit to beginning discussions with affected cities on reissuing the MS4 permit immediately – especially given that it had recently adopted the Ventura County MS4 permit; and that the Regional Board had stated earlier that it would begin work on re-issuing the Los Angeles County MS4 permit after adopting the Ventura MS4 permit. Our not so worse-case concern is that it may take 5 years to adopt the long over due MS4 permit. Further, the Regional Board has not provided a reason as to why it cannot start work now on adopting the new MS4 permit.

Indeed, it is in the interest of all affected parties to reissue the MS4 permit as soon as possible. The new permit would enable permittees to implement low impact development (LID) strategies designed to facilitate groundwater recharge; reduce runoff flow from new developments; treat runoff through infiltration; and reduce the need for conventional storm drain/flood control facilities. LID would also facilitate compliance with total maximum daily load (TMDL) waste load allocations (WLA) for several pollutants including bacteria, metals, and nutrients. These new requirements would also facilitate compliance with some TMDLs.

The new permit would also correct several of the deficiencies associated with the current permit, including but not limited to: (i) eliminating an incorrect definition of illicit connections that has resulted in the under-reporting of such discharges; (ii) adding nurseries as a new commercial establishment that has been determined to be a significant contributor of pollutants; (iii) adding NAICS, in addition to SIC, as an industrial classification code system that would enable permittees to more easily determine

facilities that are subject to industrial and commercial inspections; (iv) providing clearer expectations regarding best management practices (BMPs) for various categories of construction sites; and providing clearer expectations for preparing and completing annual reports. All of these new features, which are likely to be incorporated into the next permit, would obviously facilitate compliance with existing stormwater regulations and, thereby, improve stormwater quality.

3. There is no reason to incorporate the trash TMDL into the current MS4 Permit. The regional board could, in the alternative, require municipal permittees to install catch basin debris exclusion controls in industrial and commercial areas during the five year permit as it did in the recently adopted Ventura MS4 permit.
4. Using the existing MS4 permit to admit TMDLs is inefficient and cost ineffective. Each time the MS4 permit is re-opened, the State is required to expend critically limited resources to amend the basin plan, a process that includes scheduling one or more workshops and public hearings before adoption. And, if the re-opener is challenged administratively and legally, the State would have to allocate additional staff already stressed by furloughs and use funds to pay for legal services at a time when the State budget is already in crisis.
5. A recent study commissioned by USEPA through the National Academy of Sciences on Urban Stormwater Management in the United States has concluded that the stormwater program in general, and TMDLs in particular, are in need of correction. One of the contributors to this study is Dr. Xavier Swamikannu, currently the stormwater chief for the Regional Board. The study concluded that the TMDL program should be replaced. It states: "...the technical demands of the TMDL program make for a particularly bad fit with the technical impediments already present in monitoring and managing stormwater."¹

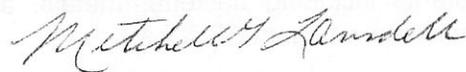
Monitoring for stormwater is a challenge in itself. This is because "pollutant loadings in stormwater effluent vary dramatically over time and stormwater is notoriously difficult to monitoring for pollutants. This makes it almost impossible to understand to what extent a stormwater point source contributes to degrading a water body. Such a limitation complicates not only formulating a TMDL but also assuring that the TMDL will meet the water quality standard for which it was contrived. The study offered, in the alternative, a watershed-based permitting approach that focuses on volume reduction controls and protecting the biological integrity of the nation's waters."³

Although the City is not sufficiently convinced that the NRC study's alternative is desirable it does believe that the TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numeric limitations that may not improve water quality standards and the uses for which they were established to protect.

In conclusion, the City asks the Regional Board to not include any TMDL in the current or future MS4 permit. Instead, it proposes the following: fast track adopting the new MS4 permits for Los Angeles County and include a provision that calls for the installation of trash exclusion controls similar to what is in the recently adopted Ventura MS4 permit.

Should you have any questions, please contact me.

Sincerely,



MITCHELL G. LANSDSELL
City Manager

¹Urban Stormwater Management in the United States,
The National Research Council of the National Academies, 2008, p. 51.

²*Ibid.*, page 52.

³*Ibid.*, page 40.

City of Inglewood



Inglewood

California

Public Works Department
ONE MANCHESTER BOULEVARD / INGLEWOOD, CA. 90301 / P.O. BOX 6500 / INGLEWOOD, CA. 90312
Telephone (310) 412-5333 / Fax (310) 412-5552
www.cityofinglewood.org

GLEN W. C. KAU, P.E.
Public Works Director

July 23, 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Inglewood is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Our City is located within the Dominguez Channel and Ballona Creek watersheds and we are providing comments based on the precedent that this action would set for our TMDLs. The public notice for the NPDES permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, the San Gabriel River and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they

attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The costs are estimated by the Regional Water Board the hundreds of millions and several billion dollars for our Region. For example, the Board staff estimated that compliance costs will range between \$2.1 million and \$2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the costs, the Los Angeles River Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into the NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably

achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in “rare instances.”

“EPA’s policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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.” (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the “rare instances” which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- “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 limits.” (State Board Order WQ 98-01, pg. 12)
- “Federal regulations do not require numeric effluent limitations for discharges of stormwater.” (State Board Order WQ 2006-0012, pg 17)
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The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

TMDL MOAs could include appropriate Basin Plan Tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Our City takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of the municipal NPDES permit to insert the TMDLs. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,



Glen W.C. Kau, P.E
Public Works Director/City Engineer

cc: Barmeshwar Rai, Principal Engineer Water Resources
Ray Tahir, TECS Environmental

City of LaCanada Flintridge



City Council
Laura Olhassco, Mayor
Donald R. Voss, Mayor Pro Tem
Gregory C. Brown
Stephen A. Del Guercio
David A. Spence

July 28, 2009

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of La Cañada Flintridge is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of the costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In an example of the variable nature of urban runoff, even the devices necessary to capture trash undergo frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel

Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

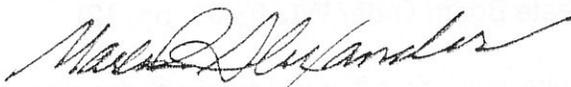
We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing them into the municipal NPDES permits. While this may be the preference of US EPA staff in Region IX, and may also be the goal of environmental attorneys, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Water Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

A Trash TMDL MOA could include Basin Plan Tables 7-2-1, 7-2-2 and 7-2-3, which set forth the provisions of the Los Angeles River Trash TMDL. It also could include a detailed plan of actions to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. This time of economic uncertainty and limited governmental resources calls for the Board and the cities to think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



Mark R. Alexander
City Manager

City of Monrovia



Office of the City Manager

July 28, 2009

Mr. Ivar Ridgeway
Stormwater Permitting Unit
Regional Water Quality Control Board – Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA E-MAIL TO:
iridgeway@waterboards.ca.gov

SUBJECT: REQUEST FOR INPUT REGARDING INCORPORATING THE PROVISIONS OF THE LOS ANGELES RIVER TRASH TMDL INTO THE LOS ANGELES COUNTY MS4 PERMIT

Dear Mr. Ridgeway:

Thank you for this opportunity to provide input on incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. The City of Monrovia is located in the Los Angeles River Watershed. We are also a member of the Los Angeles Stormwater Quality Partnership (LASQP)¹ and by reference incorporates the comments made separately by LASQP on the subject request.

In the spirit of establishing the constructive and collaborative relationship that Monrovia, LASQP, and the LARWQCB are pursuing together, we are using this opportunity to strongly recommend the Regional Water Board incorporate conditions in the Los Angeles County MS4 permit, consistent with the Los Angeles River Trash TMDL, in a different way than the approach used for the Santa Monica Bay Beaches Bacteria Dry Weather TMDL.

As you are likely aware, that approach led to a petition challenging the permit, predicted an immediate receiving water quality objective exceedances, subsequent enforcement actions, and a lawsuit – all of which is yet to be reconciled. All of that can be avoided when incorporating the Los Angeles River Trash TMDL waste load allocations into the Los Angeles County MS4 permit. To do so, the Regional Water Board would design the permit provisions: 1) using USEPA's official guidance² (enclosed) and 2) recognizing and building on the very significant level of best management practice implementation already conducted in response to the Los Angeles River Trash TMDL.

¹ The purpose of LASQP is to establish a new kind of continuing and sustained working relationship between the municipal stormwater permittees and the Regional Water Board – a relationship focused on improving stormwater quality through a constructive and collaborative effort.

² *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*; USEPA Memorandum from Robert H. Wayland III, Director – Office of Wetlands, Oceans and Watersheds and James A. Hanlon, Director – Office of Wastewater Management to Water Division Directors Regions 1-10; November 22, 2002.

1) Use USEPA Guidance

USEPA's guidance³ "clarifies existing USEPA regulatory requirements" and "addresses the establishment of water quality-based effluent limits (WQBELs) and conditions in National Pollutant Elimination Discharge Elimination System (NPDES) permits based on the WLAs for storm water discharges in TMDLs", and includes the following statements:

"NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 CFR §122.44(d)(1)(vii)(B)."⁴

"WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary."⁵

"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."⁶

"Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR §122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements rather than as numeric effluent limits."⁷

USEPA's official guidance also strongly encourages stormwater permit writers to address the regulation's consistency requirement through use of an iterative BMP approach:

"The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001)."⁸

³ Ibid, page 1.

⁴ Ibid, page 2.

⁵ Ibid, page 2.

⁶ Ibid, page 2.

⁷ Ibid, page 4.

⁸ Ibid, page 5.

2) Build on significant investment and achievement of best management practices

In December 2001, the Regional Water Board set up a process in the Los Angeles County MS4 permit for incorporating conditions consistent with the assumptions and requirements of the Trash TMDL WLAs – a process based on the BMP approach strongly recommended by USEPA:

"The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies." (Part 3. Storm Water Quality Management Program (SQMP) Implementation, C. Revision of the Storm Water Quality Management Program.)

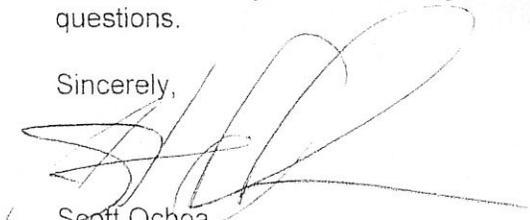
"Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs." (Part 4. Special Provisions, F. Public Agency Activities Programs, 5. Storm Drain Operation and Management, b.)

Since 2002, permittees have invested significant time and funds in understanding trash sources, assessing BMPs, and designing, installing, and testing trash capture devices. And these efforts are working – resulting in significant reductions in trash loads. In reopening the Los Angeles County MS4 Permit to incorporate the Los Angeles River TMDL, the City of Monrovia strongly encourages the Regional Water Board to:

- renew its commitment to the best management practice approach, which is also recommended by USEPA and is working,
- recognize and build on the very significant level of best management practice implementation and achievement conducted in response to the Los Angeles River Trash TMDL, and
- design the new permit provision using an approach of BMPs and adaptive implementation.

Thank you for the opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We look forward to continuing to work with you on these issues. Feel free to contact me at (626) 932-6601 or sochoa@ci.monrovia.ca.us or Heather Maloney, Senior Management Analyst (626) 932-5577 or hmaloney@ci.monrovia.ca.us with questions.

Sincerely,



Scott Ochoa
City Manager

Enc. *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, USEPA*

cc: Los Angeles Stormwater Quality Partnership



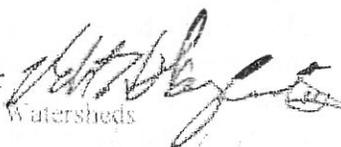
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 22 2002

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs

FROM: Robert H. Wayland, III, Director 
Office of Wetlands, Oceans and Watersheds

James A. Hanlon, Director 
Office of Wastewater Management

TO: Water Division Directors
Regions 1 - 10

This memorandum clarifies existing EPA regulatory requirements for, and provides guidance on, establishing wasteload allocations (WLAs) for storm water discharges in total maximum daily loads (TMDLs) approved or established by EPA. It also addresses the establishment of water quality-based effluent limits (WQBELs) and conditions in National Pollutant Discharge Elimination System (NPDES) permits based on the WLAs for storm water discharges in TMDLs. The key points presented in this memorandum are as follows:

NPDES-regulated storm water discharges must be addressed by the wasteload allocation component of a TMDL. See 40 C.F.R. § 130.2(h).

NPDES-regulated storm water discharges may not be addressed by the load allocation (LA) component of a TMDL. See 40 C.F.R. § 130.2 (g) & (h).

Storm water discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL. See 40 C.F.R. § 130.2(g).

It may be reasonable to express allocations for NPDES-regulated storm water discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs. See 40 C.F.R. § 130.2(i). In cases where wasteload allocations

are developed for categories of discharges, these categories should be defined as narrowly as available information allows.

The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.

NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.

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.

When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. See 40 C.F.R. § 122.44(i). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

This memorandum is organized as follows:

- (I). Regulatory basis for including NPDES-regulated storm water discharges in WLAs in TMDLs;
- (II). Options for addressing storm water in TMDLs; and

- (III). Determining effluent limits in NPDES permits for storm water discharges consistent with the WLA

(I). Regulatory Basis for Including NPDES-regulated Storm Water Discharges in WLAs in TMDLs

As part of the 1987 amendments to the CWA, Congress added Section 402(p) to the Act to cover discharges composed entirely of storm water. Section 402(p)(2) of the Act requires permit coverage for discharges associated with industrial activity and discharges from large and medium municipal separate storm sewer systems (MS4), *i.e.*, systems serving a population over 250,000 or systems serving a population between 100,000 and 250,000, respectively. These discharges are referred to as Phase I MS4 discharges.

In addition, the Administrator was directed to study and issue regulations that designate additional storm water discharges, other than those regulated under Phase I, to be regulated in order to protect water quality. EPA issued regulations on December 8, 1999 (64 FR 68722), expanding the NPDES storm water program to include discharges from smaller MS4s (including all systems within "urbanized areas" and other systems serving populations less than 100,000) and storm water discharges from construction sites that disturb one to five acres, with opportunities for area-specific exclusions. This program expansion is referred to as Phase II.

Section 402(p) also specifies the levels of control to be incorporated into NPDES storm water permits depending on the source (industrial versus municipal storm water). Permits for storm water discharges associated with industrial activity are to require compliance with all applicable provisions of Sections 301 and 402 of the CWA, *i.e.*, all technology-based and water quality-based requirements. *See* 33 U.S.C. §1342(p)(3)(A). Permits for discharges from MS4s, however, "shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." *See* 33 U.S.C. §1342(p)(3)(B)(iii).

Storm water discharges that are regulated under Phase I or Phase II of the NPDES storm water program are point sources that must be included in the WLA portion of a TMDL. *See* 40 C.F.R. § 130.2(h). Storm water discharges that are not currently subject to Phase I or Phase II of the NPDES storm water program are not required to obtain NPDES permits. 33 U.S.C. §1342(p)(1) & (p)(6). Therefore, for regulatory purposes, they are analogous to nonpoint sources and may be included in the LA portion of a TMDL. *See* 40 C.F.R. § 130.2(g).

(II). Options for Addressing Storm Water in TMDLs

Decisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data. The amount of storm water data available for a TMDL varies from location to location. Nevertheless, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges

(in the form of WLAs) and unregulated storm water (in the form of LAs). It may be reasonable to quantify the allocations through estimates or extrapolations, based either on knowledge of land use patterns and associated literature values for pollutant loadings or on actual, albeit limited, loading information. EPA recognizes that these allocations might be fairly rudimentary because of data limitations.

EPA also recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis. In this situation, EPA recommends expressing the wasteload allocation in the TMDL as either a single number for all NPDES-regulated storm water discharges, or when information allows, as different WLAs for different identifiable categories, e.g., municipal storm water as distinguished from storm water discharges from construction sites or municipal storm water discharges from City A as distinguished from City B. These categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial storm water sources or dischargers).

(III). Determining Effluent Limits in NPDES Permits for Storm Water Discharges Consistent with the WLA

Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. § 1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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.

Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 CFR § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this.

EPA expects that the NPDES permitting authority will review the information provided by the TMDL, see 40 C.F.R. § 122.44(d)(1)(vii)(B), and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit. Where BMPs are used, EPA recommends that the permit provide a mechanism to require use of expanded or better-tailored BMPs when monitoring demonstrates they are necessary to implement the WLA and protect water quality.

Where the NPDES permitting authority allows for a choice of BMPs, a discussion of the BMP selection and assumptions needs to be included in the permit's administrative record, including the fact sheet when one is required. 40 C.F.R. §§ 124.8, 124.9 & 124.18. For general permits, this may be included in the storm water pollution prevention plan required by the permit. See 40 C.F.R. § 122.28. Permitting authorities may require the permittee to provide supporting information, such as how the permittee designed its management plan to address the WLA(s). See 40 C.F.R. § 122.28. The NPDES permit must require the monitoring necessary to assure compliance with permit limitations, although the permitting authority has the discretion under EPA's regulations to decide the frequency of such monitoring. See 40 CFR § 122.44(i). EPA recommends that such permits require collecting data on the actual performance of the BMPs. These additional data may provide a basis for revised management measures. The monitoring data are likely to have other uses as well. For example, the monitoring data might indicate if it is necessary to adjust the BMPs. Any monitoring for storm water required as part of the permit should be consistent with the state's overall assessment and monitoring strategy.

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," i.e., "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

This memorandum discusses existing requirements of the Clean Water Act (CWA) and codified in the TMDL and NPDES implementing regulations. Those CWA provisions and regulations contain legally binding requirements. This document describes these requirements; it does not substitute for those provisions or regulations. The recommendations in this memorandum are not binding; indeed, there may be other approaches that would be appropriate

in particular situations. When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation. EPA may change this guidance in the future.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Charles Sutfin, Director of the Assessment and Watershed Protection Division.

cc:
Water Quality Branch Chiefs
Regions 1 - 10

Permit Branch Chiefs
Regions 1 - 10

City of Pico Rivera



6615 Passons Boulevard • Pico Rivera, California 90660

P.O. Box 1016 • Fax (562) 801-4765
Assistant City Manager (562) 801-4386

TELECOPIER TRANSMISSION

| | |
|--|---|
| Date: July 28, 2009 | Number of Pages, Including this page: 6 |
| To: Mr. Ivar Ridgeway | |
| FAX: (213) 576-6640 | Our Fax Number is: (562) 801-4765 |
| From: Charles P. Fuentes City Manager | Re: Trash TMDL into the MS4 |

IF YOU HAVE PROBLEMS, PLEASE CALL (562) 801-4386 AND ASK FOR SANDRA.

THANK YOU!



Charles P. Fuentes
City Manager

City of Pico Rivera
OFFICE OF THE CITY MANAGER

6615 Passons Boulevard · Pico Rivera, California 90660
(562) 801-4368

Web: www.pico-rivera.org · e-mail: mmoreno@pico-rivera.org

July 28, 2009

City Council

Gracie Gallegos
Mayor

Bob J. Archuleta
Mayor Pro Tem

David W. Armenta
Councilmember

Ronald M. Beilke
Councilmember

Gregory Salcido
Councilmember

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

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Signal Hill is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as numeric effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation to be enforced as a numeric limit in a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, not-to-be-exceeded, numeric limits.

Mr. Ivar Ridgeway
July 28, 2009
Page 2 of 5

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the yet to be developed Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of these costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

As evidence of the variable nature of urban runoff and the limited understanding of how to best reduce the discharge of pollutants from urban runoff, even more recently developed devices necessary to capture trash are undergoing frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) seeks to hold the cities responsible for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for

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Page 3 of 5

managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Sections 13241 and 13000). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits, particularly when doing so goes beyond what is required under federal law.

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The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

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The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL's numeric limits should not be placed into our NPDES permit:

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Page 4 of 5

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The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this regard by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

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We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing numeric limits into the municipal NPDES permits. While this may be the preference of individual US EPA staff in Region IX, and may also be the goal of environmental organizations, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

The Trash TMDL could be generally incorporated into a Municipal NPDES Permit by referencing the need to utilize MEP-compliant BMPs to strive to reach the Waste Load Allocation. More specific implementation measures, however, can if needed be developed through a Memorandum of Agreement (MOA) between the Regional Board and the Cities involved that will more specifically address the particular means of implementing the TMDL, i.e., it will identify the particular MEP-compliant BMPs that will be utilized, over a negotiated implementation schedule, to achieve deemed compliance with the TMDL. The Trash TMDL MOA thus could include a detailed implementation plan of action to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other consequences should the City fail to comply. The MOAs also could include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

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Sincerely,



Charles P. Fuentes
City Manager

cc: City Council
City Attorney
Department Heads

City of Rosemead

MAYOR:
MARGARET CLARY

MAYOR PRO TEM
GARY TAYLOR

COUNCIL MEMBERS:
SANDRA ARMENTA
POLLY LOW
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City of Rosemead

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July 23, 2009

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imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

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A Trash TMDL MOA could include Basin Plan Tables 7-2-1, 7-2-2 and 7-2-3, which set forth the provisions of the Los Angeles River Trash TMDL. It also could include a detailed plan of actions to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Mr. Ivar Ridgeway
July 27, 2009
Page 5 of 5

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. This time of economic uncertainty and limited governmental resources calls for the Board and the cities to think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



JEFF ALLRED
CITY OF ROSEMEAD

C: Chris Marcarello
Lou LeBlanc

City of San Gabriel



City of San Gabriel

◆ City With A Mission ◆ Founded 1771 ◆

July 27, 2009

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

2009 JUL 28 PM 2 09
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

Subject: Comments In Re: Incorporation of the Trash TMDL into the Current Los Angeles County MS4 Permit

Dear Mr. Ridgeway:

The City of San Gabriel is pleased to submit comments to the Los Angeles Regional Water Quality Control Board (Regional Board) regarding its plan to incorporate the trash TMDLs for Ballona Creek and the Los Angeles River into the current Los Angeles County municipal NPDES permit (MS4 permit). The City is compelled to oppose this proposition because of the following reasons:

1. The reissuance of the current MS4 permit is long overdue by some 2-and-a-half years. Using the current MS4 permit to admit TMDLs would only cause a further delay its adoption. As you know, the MS4 permit was adopted in December of 2001 and was scheduled to expire 5 years from that date. The 5 year term of the MS4 permit is specified under federal stormwater regulations. Our understanding is that the State must also honor this requirement (we defer to the legal comments on this matter submitted to you from the Coalition for Practical Regulation (CPR)).
2. The Regional Board's desire to incorporate the trash TMDLs into the current MS4 permit suggests that it will take even longer for the new MS4 to be issued. The City is unclear as to why it is taking so long for the Regional Board to adopt the new permit. It sees no reason why the Regional Board should not commit to beginning discussions with affected cities on reissuing the MS4 permit immediately – especially given that it had recently adopted the Ventura County MS4 permit; and that the Regional Board had stated earlier that it would begin work on re-issuing the Los Angeles County MS4 permit after adopting the Ventura MS4 permit. Our not so worse-case concern is that it may take 5 years to adopt the long over due MS4 permit. Further, the Regional Board has

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not provided a reason as to why it cannot start work now on adopting the new MS4 permit.

In deed it is in the interest of all affected parties to reissue the MS4 permit as soon as possible. The new permit would enable permittees to implement low impact development (LID) strategies designed to facilitate groundwater recharge; reduce runoff flow from new developments; treat runoff through infiltration; and reduce the need for conventional storm drain/flood control facilities. LID would also facilitate compliance with total maximum daily load (TMDL) waste load allocations (WLA) for several pollutants including bacteria, metals, and nutrients. These new requirements would also facilitate compliance with some TMDLs.

The new permit would also correct several of the deficiencies associated with the current permit, including but not limited to: (i) eliminating an incorrect definition of illicit connections that has resulted in the under-reporting of such discharges; (ii) adding nurseries as a new commercial establishment that has been determined to be a significant contributor of pollutants; (iii) adding NAICS, in addition to SIC, as an industrial classification code system that would enable permittees to more easily determine facilities that are subject to industrial and commercial inspections; (iv) providing clearer expectations regarding best management practices (BMPs) for various categories of construction sites; and (v) providing clearer expectations for preparing and completing annual reports. All of these new features, which are likely to be incorporated into the next permit, would obviously facilitate compliance with existing stormwater regulations and, thereby, improve stormwater quality.

3. There is no reason to incorporate the trash TMDL into the current MS4 Permit. The regional board could, in the alternative, require municipal permittees to install catch basin debris exclusion controls in industrial and commercial areas during the five year permit as it did in the recently adopted Ventura MS4 permit.
4. Using the existing MS4 permit to admit TMDLs is inefficient and cost ineffective. Each time the MS4 permit is re-opened, the State is required to expend critically limited resources to amend the basin plan, a process that includes scheduling one or more workshops and public hearings before adoption. And, if the re-opener is challenged administratively and legally, the State would have to allocate additional staff already stressed by furloughs and use funds to pay for legal services at a time when the State budget is already in crisis.
5. A recent study commissioned by USEPA through the National Academy of Sciences on Urban Stormwater Management in the United States has concluded that the stormwater program in general, and TMDLs in particular, are in need of correction. One of the contributors to this study is Dr. Xavier Swamikannu, currently the stormwater chief for the Regional Board. The study concluded that the TMDL program should be replaced. It states: "... the technical demands of the TMDL program make for a particularly bad

fit with the technical impediments already present in monitoring and managing stormwater.”¹

Monitoring for stormwater is a challenge in itself. This is because “pollutant loadings in stormwater effluent vary dramatically over time and stormwater is notoriously difficult to monitor for pollutants.”² This makes it almost impossible to understand to what extent a stormwater point source contributes to degrading a water body. Such a limitation complicates not only formulating a TMDL but also assuring that the TMDL will meet the water quality standard for which it was contrived. The study offered, in the alternative, a watershed-based permitting approach that focuses on volume reduction controls and protecting the biological integrity of the nation’s waters.³

Although the City is not sufficiently convinced that the NRC study’s alternative is desirable it does believe that the TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numeric limitations that may not improve water quality standards and the uses for which they were established to protect.

In conclusion, the City asks the Regional Board to not include any TMDL in the current or future MS4 permit. Instead, it proposes the following: fast track adopting the new MS4 permits for Los Angeles County and include a provision that calls for the installation of trash exclusion controls similar to what is in the recently adopted Ventura MS4 permit.

Should you have any questions, please contact me at 626-308-2806 x4631.

Sincerely,



Bruce D. Mattern, PE
City Engineer

Cc: City Manager
Deputy City Manager
City Council
Engineering-File

¹Urban Stormwater Management in the United States, *The National Research Council of the National Academies*, 2008, page 51.

²*Ibid.*, page 52.

³*Ibid.*, page 40.

City of Signal Hill

07/23/09



CITY OF SIGNAL HILL

2175 Cherry Avenue • Signal Hill, California 90755-3799

July 23, 2009

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The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this regard by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing numeric limits into the municipal NPDES permits. While this may be the preference of individual US EPA staff in Region IX, and may also be the goal of environmental organizations, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

The Trash TMDL could be generally incorporated into a Municipal NPDES Permit by referencing the need to utilize MEP-compliant BMPs to strive to reach the Waste Load Allocation. More specific implementation measures, however, can if

Mr. Ivar Ridgeway
July 23, 2009
Page 5 of 5

needed by developed through a Memorandum of Agreement (MOA) between the Regional Board and the Cities involved that will more specifically address the particular means of implementing the TMDL, i.e., it will identify the particular MEP-compliant BMPs that will be utilized, over a negotiated implementation schedule, to achieve deemed compliance with the TMDL. The Trash TMDL MOA thus could include a detailed implementation plan of action to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other consequences should the City fail to comply. The MOAs also could include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. In this time of economic uncertainty and limited governmental resources, the Board and the cities must think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality.

Sincerely,



Kenneth C. Farfaring
City Manager

cc: City Council
City Attorney
Mr. Richard Montevideo, Esq
Department Heads

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Kenneth O. Parsons
City Manager
City Council

City of Signal Hill

07/29/09



CITY OF SIGNAL HILL

2175 Cherry Avenue • Signal Hill, California 90755-3799

Regional Board Workshop
Incorporation of the Los Angeles River Trash TMDL into the Municipal NPDES
Permit

By
Ken Farfsing, City Manager

July 29, 2009

The City of Signal Hill and other communities are rightfully concerned about the reopening of the Municipal NPDES Permit to include the Trash TMDL as a numeric limit. Of a separate and equal concern is the fact that the Regional Board has failed to move forward in a timely manner to process our completed ROWD application, on file since 2006. The City's ROWD outlines a reasonable alternative to implementing the TMDLs. Your proposed action to incorporate the numeric limits found in the Trash TMDL into the NPDES Permit raises the concern of our community for the yet to be adopted, multiple TMDLs, such as the Los Angeles River Metals TMDL, the Los Angeles River Bacteria TMDL and the Los Cerritos Channel TMDL and the very real budget impacts on our small community in attempting to meet multiple numeric waste load allocations.

We believe that Federal and State agencies understand the difficulty of characterizing and controlling storm water and urban runoff, as it moves from community to community. Federal law and State policy do not require or even recommend compliance with TMDLs through the use of numeric limits, (i.e. strict compliance with the waste load allocations in a TMDL). Instead, both State and Federal policy provides for compliance with TMDLs through the use of iterative Maximum Extent Practicable (MEP) compliant best management practices (BMPs), and not through strict compliance with the Waste Load Allocations, which are a form of numeric effluent limits.

Our July 23rd comment letter cited a November 22, 2002 EPA guidance document – *“Establishing Total Maximum Daily Load Waste Load Allocations for Storm Water Sources and NPDES Permit Requirements based on those Waste Load Allocations.”* EPA's own guidance document on TMDLs and NPDES Permits specifically states that “EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices or other similar requirements, rather than as numeric

effluent limits.” The policy goes on to state “EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used in rare instances.”

The key paragraphs from the EPA guidance memo on TMDLs are found on Page 4:

“EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices or other similar requirements, rather than as numeric effluent limits...The Interim Permitting Approach Policy recognizes the need for an iterative approach to controlling pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be tailored in subsequent rounds.

EPA's policy recognizes that because storm water discharges are due to storm size events that are highly variable in frequency and duration are not easily characterized, only in rare cases will it feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability of the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and than numeric limits will be used in rare instances.” (Page 4)

We have to ask the Board as to what is the “rare instance” that compels the inclusion of the numeric waste load allocations from this TMDL in the NPDES Permit? I am submitting a copy of this guidance memo for your records with this testimony.

Alternative Implementation to Including Numeric Limits in the NPDES Permit

We understand that TMDLs are not self-implementing. While placing the numeric limits of the TMDLs into the NPDES Permit may be the preference of individual US EPA staff at Region IX, and may also be the goal of some environmental organizations, the Regional Board has great discretion in how it chooses to implement the TMDLs. It is time to move beyond litigation and develop a collaborative model for TMDL implementation.

EPA has indicated that TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreement (MOAs). The Trash TMDL could be generally incorporated into the NPDES Permit by referencing the need to use MEP-compliant

BMPS to reach the Waste Load Allocation. The Regional Board, in working with the Cities and Los Angeles County, has approved full capture and partial capture devices.

The Cities and the Board would then develop an MOA to implement the TMDL. The MOA would contain the implementation schedule and include financial consequences should the City fail to comply. The schedule would outline the timeline for installing the necessary controls, conducting follow-up monitoring and performing additional studies that could lead to adjustments to the desired endpoint of the TMDL and the associated allocations to the pollutant sources. The MOA would outline the adaptive implementation process of taking initial corrective actions, observing the consequences and making the necessary adjustments prior to proceeding with implementation of additional corrective measures. The MOAs also could include a provision to reimburse the Regional Board for the administrative costs of enforcing the TMDL.

It is clear to this stakeholder that the Regional Board and the Cities are facing some very difficult economic times, with strained public resources, for a number of years. For example, the June 2009 unemployment rate in the Gateway Cities is 12.2% and climbing. This is higher than the national average at 9.7% and County (11.4%) and State (11.6%) totals. This translates into over 103,000 persons unemployed. Unemployment in the City of Commerce is 20.1% and in the City of Compton it is 19.2%. Unemployment in Long Beach is 12.5%, with 30,100 people unemployed. These economic conditions have devastated local municipal budgets, as sales taxes and other revenues have decreased dramatically. Increased foreclosures have further dropped property tax revenues. The economic recession has also devastated the State's budget and in turn devastated the Regional Board's budget. Many of our cities are facing multi-million dollar deficits. On top of these economic problems, the State of California recently raided millions of dollars from the local governments. I have attached the June unemployment rates for your information.

We believe that the Regional Board/City MOA would "jump start" the implementation process faster than will occur through the more traditional agency-driven TMDL process. The result would be an accelerated improvement in the condition of the impaired water bodies and a more directed and cohesive community effort in watershed management. It is incumbent upon the Regional Board and the Cities to collaborate and find cost-effective and scientifically sound best management practices to improve water quality. We face what may be a never ending cycle of third-party litigation, should you implement the TMDLs through the municipal NPDES Permits.

Unemployment Rates
June 2009
Data Not Seasonally Adjusted

| Area Name | Labor Force | Employ- ment | Unemployment Number | Rate |
|---------------------------|----------------|-----------------|------------------------|-------|
| Artesia | 8,200 | 7,600 | 600 | 7.8% |
| Avalon | 1,900 | 1,800 | 100 | 5.0% |
| Bell | 16,300 | 13,800 | 2,400 | 15.0% |
| Bell Gardens | 17,900 | 14,700 | 3,200 | 18.0% |
| Bellflower | 37,200 | 32,900 | 4,300 | 11.5% |
| Cerritos | 29,200 | 27,400 | 1,800 | 6.2% |
| Commerce | 5,600 | 4,500 | 1,100 | 20.1% |
| Compton | 37,600 | 30,400 | 7,200 | 19.2% |
| Cudahy | 10,100 | 8,500 | 1,600 | 15.7% |
| Downey | 54,500 | 49,500 | 5,000 | 9.1% |
| Hawaiian Gardens | 6,500 | 5,700 | 800 | 12.1% |
| Huntington Park | 27,400 | 22,800 | 4,600 | 16.9% |
| La Habra Heights | 2,900 | 2,800 | 100 | 4.1% |
| La Mirada | 24,600 | 22,900 | 1,700 | 6.9% |
| Lakewood | 45,200 | 41,900 | 3,300 | 7.4% |
| Long Beach | 241,400 | 211,300 | 30,100 | 12.5% |
| Lynwood | 28,600 | 23,500 | 5,100 | 17.8% |
| Maywood | 12,600 | 10,500 | 2,100 | 16.4% |
| Montebello | 29,400 | 25,700 | 3,700 | 12.7% |
| Norwalk | 50,000 | 44,000 | 6,000 | 12.0% |
| Paramount | 25,300 | 21,200 | 4,200 | 16.5% |
| Pico Rivera | 29,500 | 26,400 | 3,100 | 10.6% |
| Santa Fe Springs | 8,000 | 7,200 | 800 | 9.5% |
| Signal Hill | 5,800 | 5,300 | 500 | 8.5% |
| South Gate | 42,300 | 36,200 | 6,100 | 14.5% |
| Vernon | 0 | 0 | 0 | 0.0% |
| Whittier | 44,100 | 40,500 | 3,600 | 8.1% |
| | | | | |
| Gateway Cities Total | 842,100 | 739,000 | 103,100 | 12.2% |
| | | | | |
| Los Angeles County Total | 4,976,100 | 4,411,200 | 564,900 | 11.4% |
| | | | | |
| State of California Total | 18,530,800 | 16,378,800 | 2,152,000 | 11.6% |
| | | | | |
| United States Total | | | | 9.7% |

City of Vernon



COMMUNITY SERVICES & WATER DEPARTMENT

Samuel Kevin Wilson, Director of Community Services & Water
4305 Santa Fe Avenue, Vernon, California 90058
Telephone (323) 583-8811 Fax (323) 826-1435

July 23, 2009

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

SUBJECT: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of Vernon is located in the Los Angeles River Watershed and is in receipt of your notice of July 6, 2009 regarding the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Your notice states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Our City takes pride in its environmental programs. We are implementing programs that are making significant reductions in the trash from our community's storm drain system, despite the economic recession and the difficulty our City is having in funding basic municipal services. We have been implementing both the TMDL and NPDES permit programs, without the Regional Board formally placing the TMDL into our stormwater permit. We are very concerned about the reopening of our NPDES permit to insert the TMDL and its numeric limitations and the precedent that this will create. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the Watershed cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to adding numeric limits to municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The Regional Water Board has estimated the cost for local government compliance with the Trash TMDL will be hundreds of millions of dollars. The Regional Board has estimated the compliance costs for the Los Angeles River Metals TMDL to be approximately \$1.4 billion. No cost estimates have yet been developed for compliance with the Bacteria TMDL, but those figures are expected to be in the billions as well. As an example of the costs, the Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In an example of the variable nature of urban runoff, even the devices necessary to capture trash undergo frequent review and revision. The County of Los Angeles and several of the cities have invested significant time and funds in the design and testing of "full capture" and "partial capture" devices, since 2002. These devices continue to evolve in an "iterative" process of invention, evaluation, and reinvention. The Regional Board has been a partner in this monitoring and the certification of trash catching devices.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into our NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs stems from the Clean Water Act and EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account

economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

Since this TMDL is one of many to be imposed it is not the “rare instance” specified by the U. S. EPA to require numeric limits. In addition, the costs associated with implementation are over and above the Federal Mandate and are “unfunded mandates” by the State of California. According to the State Constitution, any “unfunded mandate” by the State shall be funded by the State. Please identify and appropriate the funding for achieving the numeric limits if incorporated in the MS4 Permit.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in “rare instances.”

“EPA’s policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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.” (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the “rare instances” which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements In support of our position, that the TMDL should not be placed into our NPDES permit:

- “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 limits.” (State Board Order WQ 98-01, pg. 12)
- “Federal regulations do not require numeric effluent limitations for discharges of stormwater.” (State Board Order WQ 2006-0012, pg 17)
- “It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers.” (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

Implementation of the TMDL by Memoranda of Agreement

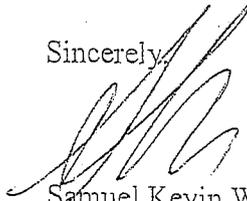
We understand that TMDLs are not self-implementing; however, as explained above, EPA's policy does not require that TMDLs be implemented by placing them into the municipal NPDES permits. While this may be the preference of US EPA staff in Region IX, and may also be the goal of environmental attorneys, the Regional Board has great discretion in how it chooses to implement the TMDL program in its jurisdiction. The Regional Water Board, the cities and the environmental community need to eventually move beyond litigation and create a successful model of implementation.

TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

The Trash TMDL could be generally incorporated into a Municipal NPDES Permit by referencing the need to utilize MEP-compliant BMPs to strive to reach the Waste Load Allocation. More specific implementation measures, however, can if needed be developed through a Memorandum of Agreement (MOA) between the Regional Board and the Cities involved that will more specifically address the particular means of implementing the TMDL, i.e., it will identify the particular MEP-compliant BMPs that will be utilized, over a negotiated implementation schedule, to achieve deemed compliance with the TMDL. The Trash TMDL MOA thus could include a detailed implementation plan of action to be taken by our City to implement the Trash TMDL and a timeline for completing them. In addition, the TMDL MOA could contain financial and other consequences should the City fail to comply. The MOAs also could include a provision to reimburse for administrative fees incurred by the Regional Board to help defray the costs of any TMDL enforcement actions.

We stand ready to help develop and to participate in a TMDL MOA with the Regional Board. This time of economic uncertainty and limited governmental resources calls for the Board and the cities to think outside of the "NPDES permit box" and find new ways of accomplishing our mutual goals of improving water quality. If you require additional information, please contact Sherwood Natsuhara of my staff at (323) 583-8811, Ext. 305.

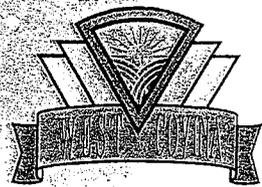
Sincerely,



Samuel Kevin Wilson, P.E.
Director of Community Services & Water

SKW/sn

City of West Covina



Public Works Department

July 21, 2009

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

LOS ANGELES RWQCB
320 W. 4TH STREET, SUITE 200
LOS ANGELES, CA 90013

2009 JUL 23 PM 2 48

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

Dear Mr. Ridgeway:

The City of West Covina Public Works Department is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Although our City is not located in the Los Angeles River watershed, we are providing comments based on the precedent that this action would set for our TMDLs. The public notice for the NPDES permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, the San Gabriel River and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits – The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The costs are estimated by the Regional Water Board the hundreds of millions and several billion dollars for our Region. For example, the Board staff estimated that compliance costs will range between \$2.1 million and \$2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the costs, the Los Angeles River Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into the NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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." (EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

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Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

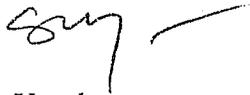
TMDL MOAs could include appropriate Basin Plan Tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOA could contain financial and other penalties should the Public Works Department fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

The City of West Covina Public Works Department takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of the

Mr. Ivar Ridgeway
July 21, 2009 - Page 4

municipal NPDES permit to insert the TMDLs. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,



Shannon A. Yauchzee
Public Works Director/City Engineer

cc: Chris Freeland, Deputy City Manager

City of Whittier



City of Whittier

13230 Penn Street, Whittier, California 90602-1772
(562) 945-8200 www.cityofwhittier.org

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Bob Henderson
Mayor

Greg Nordbak
Mayor Pro Tem

Cathy Warner
Council Member

Owen Newcomer
Council Member

Joe Vinatieri
Council Member

Stephen W. Helvey
City Manager

July 24, 2009

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

Dear Mr. Ridgeway:

Re: Incorporating the Trash TMDL into the MS4 Permit (Case No. CAS004001)

The City of Whittier is providing the following comments on the possible incorporation of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. Although our City is not located in the Los Angeles River watershed, we are providing comments based on the precedent that this action would set for our TMDLs. The public notice for the NPDES permit reopener states that 40 CFR Section 122.44(d)(4)(vii)B requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. However, there is nothing in the regulations you cite that require incorporation of waste allocations as effluent limits in any municipal NPDES permit. We know of no authority and no requirement under state or federal law that compels incorporation of a TMDL's waste load allocation into a municipal NPDES permit.

Dozens of TMDLs have been adopted or will be adopted in the next several years for the Region's water bodies. These include Metals and Bacteria TMDLs for the Los Angeles River, the San Gabriel River and other water bodies, which are proving difficult and costly to understand and to implement. Understanding the sources and impacts of stormwater pollutants is scientifically challenging, since many sources are diffuse in the urban environment. Controlling these pollutants is proving challenging, since reasonably affordable solutions are not currently available to cities when they attempt to meet numeric requirements imposed by the TMDLs, as strict, never-to-be-exceeded, numeric limits.

Mr. Ivar Ridgeway
Page 2 of 4
July 24, 2009

League of Cities Policies Oppose Numeric Limits in Municipal NPDES Permits –
The Problems of Imposing Strict Numeric Limits on an Uncertain Outcome

Many of the region's cities are members of the League of California Cities, an organization representing over 450 municipalities statewide. The League has long-established policies opposed to inserting numeric limits into municipal stormwater permits. These policies cite the variable nature of stormwater, as well as both the difficulty and high costs involved in controlling runoff as mitigating factors. The League urges water boards to design NPDES permits that rely on the use of best management practices (BMPs) to the maximum extent practicable to reduce pollutants from urban runoff. (See the League's *Guiding Principles- 2008* and *Final Report of the Water Quality Regulatory Task Force – 2003*.)

TMDL implementation is a daunting and costly task for local government. The costs are estimated by the Regional Water Board the hundreds of millions and several billion dollars for our Region. For example, the Board staff estimated that compliance costs will range between \$2.1 million and \$2.8 million per square mile for the San Gabriel River Metals TMDL, not including land acquisition. As an example of the costs, the Los Angeles River Watershed communities are currently investing over \$6 million in scientific studies in an attempt to understand the science, monitoring and implementation needed to reduce both metals and bacteria in the Los Angeles River.

In this context, applying strict numeric limits to the iterative process (invention and reinvention) attempts to hold the cities liable for numeric certainty in an inherently uncertain process. This action would expose the cities not only to Regional Board fines for non-compliance, but expose our communities to third-party litigation. We do not understand the Board's need to place numeric limits into the NPDES permit, especially when the science and technology are still being perfected and when other, more appropriate, implementation mechanisms exist that the Board could utilize.

The Regional Board Has Responsibility to Adopt Reasonable Regulations

The NPDES and TMDL programs originate in the Clean Water Act and US EPA was given responsibility to implement the programs by Congress, with the ability to delegate the programs to the individual states. California took over the responsibility for managing the NPDES Permit program from EPA over two decades ago. Both EPA policies and state law governing the permits give the Regional Board considerable discretion in how they implement municipal NPDES permits.

Neither EPA policies nor state law provisions require the imposition of numeric limits on municipal urban runoff. Specific state law provisions include the

requirement that Regional Boards consider water quality conditions that could be reasonably achieved and take into account economic considerations when making permit decisions (California Water Code Section 13241). We strongly believe that the current economic recession should give the Regional Board great pause in imposing numeric limits in the municipal NPDES Permits.

EPA Policy – Numeric Limits Should Be Used Only in Rare Cases

EPA provided a guidance memorandum on establishing TMDL waste load allocations for stormwater sources and NPDES Permit requirements on November 22, 2003. This policy states that numeric limits should be placed into the NPDES Permits only in "rare instances."

"EPA's policy recognizes that because stormwater discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare instances will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges... 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."
(EPA Guidance Memo, Page 4.)

The Regional Board Should Use BMPs in the NPDES Permit Instead of Numeric Limits

With respect to municipal stormwater discharges, Congress clarified that US EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits. The Regional Board should require implementation of BMPs to reduce pollutant loads. We fail to understand the "rare instances" which the Regional Board is relying on to propose implementation of the Trash TMDL through our NPDES permit.

The State Water Board issued a series of orders on BMP implementation and commissioned a panel of experts (Blue Ribbon Panel) that studied the feasibility of imposing numeric limits in municipal NPDES permits. We cite the following statements in support of our position, that the TMDL should not be placed into our NPDES permit:

- "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 limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)

Mr. Ivar Ridgeway
Page 4 of 4
July 24, 2009

- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater*, June 19, 2006, pg. 8)

The Regional Board approved full and partial trash capture devices which can be placed into the NPDES permit, instead of placing the TMDL into the permit. The Regional Board has already established a precedent in this by placing trash reduction BMPs into the current permit, including street sweeping and the placement of trash receptacles at all transit stops.

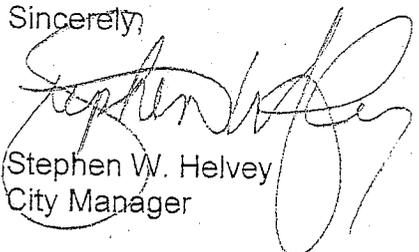
Implementation of the TMDL by Memoranda of Agreement

We understand that TMDLs are not self-implementing. TMDLs can be developed and implemented through a variety of procedures, including the third-party development process established through memoranda of agreements (MOAs). Since the Regional Board and EPA have already entered into a MOA with the City of Los Angeles for the Bacteria TMDL (Cleaner Rivers Through Effective Stakeholder-Led TMDLs or CREST), the precedent already exists.

TMDL MOAs could include appropriate Basin Plan Tables and a detailed plan of actions to be taken by the cities. In addition, the TMDL MOA could contain financial and other penalties should the City fail to comply. The MOAs could include a provision to return an administrative fee directly to the Regional Board to help defray the costs of any TMDL enforcement actions.

Our City takes pride in its environmental programs. We are implementing programs that are making significant improvements in the quality of our community's runoff, despite the economic recession and the difficulty our City is having in funding basic municipal services. We are very concerned about the reopening of the municipal NPDES permit to insert the TMDLs. We believe that the Board should use a more collaborative approach with the cities to achieve the desired environmental outcome.

Sincerely,


Stephen W. Helvey
City Manager

cc: David Pelsler, Director of Public Works

County of Los Angeles, DPW



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

GAIL FARBER, Director

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<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: WM-9

August 3, 2009

Ms. Tracy Egoscue
Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr. Ivar Ridgeway

Dear Ms. Egoscue:

WORKSHOP FOR THE INCORPORATION OF THE LOS ANGELES RIVER TRASH TOTAL MAXIMUM DAILY LOAD INTO THE LOS ANGELES COUNTY MUNICIPAL STORMWATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

The County of Los Angeles (County) appreciates the opportunity to comment on this matter.

First, we submit that the appropriate procedure to follow is to have the Los Angeles County Municipal Stormwater Permit reflect the provisions of the Los Angeles River Trash Total Maximum Daily Load (TMDL) at the time the permit is renewed. The past practice of reopening the permit to reflect individual TMDLs has resulted in piecemeal and uncoordinated approaches to pollution control. The same outcome could occur here. A better approach would be to have a planned, comprehensive approach for implementation of TMDLs that is reflected in the renewed permit when it is issued. As the California Regional Water Quality Control Board (Regional Board) is aware, the County has been voluntarily implementing the trash TMDL even without it being incorporated into the permit. We believe other permittees are likewise already complying. Therefore, there is no need for a piecemeal approach.

Ms. Tracy Egoscue
August 3, 2009
Page 2

If the Regional Board rejects this suggestion and insists on incorporating TMDLs piecemeal, then the Los Angeles River Trash TMDL should be incorporated through reference to Best Management Practices specifically compliance through installation of the full-capture system. The Los Angeles River Trash TMDL allows dischargers to achieve compliance through a full-capture system as defined by the TMDL. This provision gives dischargers a realistic and tangible means by which to obtain regulatory compliance.

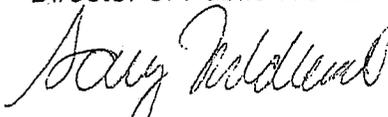
In a letter dated August 1, 2007, the Regional Board certified the County's connector pipe screen (CPS) device as a full-capture system for trash removal under the Ballona Creek and the Los Angeles River Trash TMDLs. To date, we have installed 586 CPS devices and over 1,500 automatic retractable screens in the unincorporated County area's catch basins in the Los Angeles River Watershed.

The County is committed to improving receiving water quality and improving the quality of life for our residents. Thank you for the opportunity to comment.

If you have any questions, please contact me or your staff may contact Mr. Hector Bordas at (626) 458-5947 or hbordas@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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Charles Abbott
Associates, Inc.

CAA **Charles Abbott Associates, Inc.**
 2601 Airport Drive • Suite 110, Torrance, CA 90505
 (310) 257-2000 – Phone • (310) 534-8082 – Fax

Fax

To: Ivar Rideaway From: Kimberly Collett

Client/Co.: _____ Date: _____

Fax #: 213 576-5777 Time: _____ AM/PM

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BUILDING & SERVICES ENGINEERING CONSULTANTS AND PROJECT MANAGERS

July 28, 2009

Mr. Ivar Ridgeway, Storm Water Permitting Unit
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

**Re: Modifications to Waste Discharge Requirements for the County of Los Angeles
Municipal Storm Water Discharge Permit (NPDES No. CAS004001) to
Incorporate Provisions of the Los Angeles River Watershed Trash Total
Maximum Daily Load (TMDL)**

Dear Mr. Ridgeway:

It is our pleasure to submit the following comments regarding the above referenced matter and look forward to working with the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) and staff in regards to this matter. As you may know, Charles Abbott Associates, Inc. provides environmental consulting services to various cities in the Los Angeles Region. As indicated in your July 6, 2009 memorandum (July 6, 2009 memo) [Modifications To Waste Discharge Requirements For The County Of Los Angeles Municipal Storm Water Discharge Permit, NPDES Permit No. CAS004001 (LA Stormwater Permit) To Incorporate Provisions Of The Los Angeles River Watershed Trash Total Maximum Daily Load (LA Trash TMDL)], a public workshop will be held at the Regional Board's offices, on July 29, 2009 regarding the proposed *modification* of the LA Stormwater Permit to incorporate provisions of the LA Trash TMDL.

We seek to work cooperatively with the Regional Water Board on this matter and to that end, we submit the following written comments.

Public Comment Period:

It is unclear from the July 6, 2009 memo if this public comment period is the federally mandated period. If this is a true public comment period, then we note that aside from the July 6, 2009 memo, no other documents, proposed amendments, or language changes have been provided for technical or general review. Without this information;

CHARLES ABBOTT ASSOCIATES, INC.

1000 Wilshire Blvd., Suite 1100, Los Angeles, CA 90017
Tel: (213) 350-4200 FAX: (213) 350-2652
www.charlesabbott.com

it is impossible to provide anything other than basic comment and we request that any documents in support of this proposed reopener be provided for our review.

Incorrect Reference to 40 CFR 122.44(d)(4)(vii)(B):

It is also unclear from the July 6, 2009 memo what specific Federal Code section is being used for the reopening of the expired Permit to include the LA Trash TMDL. The second paragraph of the July 6, 2009 memo references "40 CFR 122.44(d)(4)(vii)(B)". After review of the federal regulations we have determined there is no such federal code section. Please clarify.

The Los Angeles MS4 Permit is Expired:

The Los Angeles County Municipal Storm Water Discharge Permit (Order No 96-054) has expired and while it has been administratively extended by the Regional Board Executive Officer in 2006, however, we believe it was the intent of Congress/US EPA that an NPDES permit have a five year life. This provides the Discharger and the Public-at-large a forum to openly discuss and/or negotiate requirements of an NPDES Permit and provide the Discharger a guarantee that requirements will not change during the life of the NPDES permit. When a permit is narrowly reopened, it typically does not allow the Discharger the adequate time to develop a corresponding plan for implementation or funding.

No Input from the Regional Water Board on Submitted Implementation Plans

We are concerned that the Regional Water Board in reopening the LA Stormwater Permit to include trash Waste Load Allocations for the LA River is creating an uneven playing field for those jurisdictions in the LA River watershed. By introducing this TMDL into the LA Stormwater Permit, these cities become subject to an enforcement mechanism, while potentially a city next door also subject to a trash TMDL (but in another watershed and not included in this proposed reopener) does not have the same immediate legal and compliance burdens placed on them.

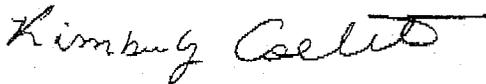
The cities under the Los Angeles River Trash TMDL submitted to the Regional Water Board implementation plans for compliance with the TMDL, however no city that we are aware of has received any input from the Regional Water Board on their plan's acceptability. The Los Angeles River cities are seeking feedback from the Regional Water Board on the implementation strategies being proposed. It is difficult to commit the necessary public funds and resources for compliance purposes, when this vital information regarding the acceptability of the implementation plans has not been provided by the Regional Water Board.

Conclusion

We respectfully request that the LA Stormwater Permit not be reopened until such time that it is the Board's plan to include all effective TMDLs and only after reviewing and approving the implementation plans.

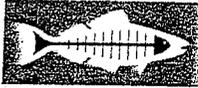
Thank you for the opportunity to comment. We appreciate your attention in this matter and appreciate a response at your earliest convenience.

Sincerely,



Kimberly Colbert
Director of Environmental Services
Charles Abbott Associates, Inc.

Heal the Bay



Heal the Bay

1444 9th Street
Santa Monica CA 90401

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fax 310 496 1902

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www.healthebay.org

August 12, 2009

Ms. Renee Purdy
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA EMAIL: rpurdy@waterboards.ca.gov

Re: Modifications to Waste Discharge Requirements for the County of Los Angeles
Municipal Storm Water Discharge Permit to Incorporate Provisions of the Los Angeles
River Watershed Trash Total Maximum Daily Load ("Reopener")

Dear Ms. Purdy,

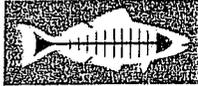
On behalf of Heal the Bay and our over 13,000 members, thank you for the opportunity to comment on the consideration of modifications to the Los Angeles County Municipal Stormwater ("L.A. MS4) permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load ("L.A. River Trash TMDL"). Federal law mandates that the Los Angeles Regional Water Quality Control Board ("Regional Board") integrate TMDLs into NPDES permits. Thus we support staff's proposal discussed at the July 29, 2009 Public Workshop to incorporate the L.A. River Trash TMDL waste load allocations and compliance points into the L.A. MS4 permit. However, it is critical that staff expand the scope of this Reopener to include additional TMDLs that are in effect.

I. The Regional Board's Proposal Is Required By Law

Federal law clearly commands that the Regional Board integrate the L.A. River Trash TMDL into the effluent limitations of appropriate NPDES permits. Specifically, Federal regulations require 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 pursuant to 40 CFR 130.7. (40 CFR § 122.44(d)(4)(vii)(B).)

In fact, the Regional Board has, in other ongoing proceedings, stated that the Environmental Protection Agency has underscored that "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs." Correspondence from Executive Officer Jonathan Bishop to Elizabeth Miller Jennings (June 15, 2006) (citing "Establishing Total Maximum Daily Loads (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs," USEPA, 2002.) Federal law leaves no room for the Regional Board to *not* assure that the Los Angeles County MS4 Permit contains limitations consistent with already established WLAs, and the underlying L.A. River Trash TMDL. Thus, the



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effluent limits set by the L.A. MS4 permit must be consistent with the L.A. River Trash TMDL's wasteload allocations. Failure to perform a nondiscretionary duty imposed by the Clean Water Act is grounds for a citizen suit, as well as withdrawal of EPA approval of California's administration of the NPDES permitting program. (33 U.S.C. §1365(a)(2); 40 C.F.R. § 123.25.)

II. Staff's Proposal is Consistent with Regional Board and State Board Actions

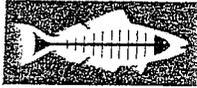
As you are aware, The Los Angeles Regional Board integrated TMDL limits for the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL and Marina del Rey Harbor Mother's Beach and Back Basins Bacteria TMDL into the L.A. MS4 permit in 2006 and 2007, respectively. In fact, the State Water Resources Control Board adopted an Order on August 4, 2009 that denied the County of Los Angeles's claims against this Regional Board action to include the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL in the L.A. MS4 permit (see Order No. WQ 2009-0008). In addition, the recently adopted Ventura MS4 included all TMDLs in effect in Ventura County and their corresponding wasteload allocations and implementation schedules. Hence, there is nothing new or unique about incorporating the L.A. River Trash TMDL into the L.A. MS4 permit and this process has been upheld by the State Board.

Integration of the L.A. River Trash TMDL at this time makes all the more sense because California's focus on the reduction of marine debris. On November 20, 2008 the California Ocean Protection Council adopted an *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter*. This landmark Strategy lays out ambitious actions for eliminating harmful trash from entering the Pacific Ocean statewide. As the OPC has recognized, the growing amount of trash in our oceans is choking marine life, crippling regional economies and diminishing quality of life along California shorelines. Stormwater runoff carries trash and other pollutants directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated.

III. The Regional Board Should Broaden the Scope of the Reopener to Include Additional TMDLs.

As acknowledged at the July 29, 2009 workshop, the renewal of the L.A. MS4 will likely be a multiple year process. Thus it is even more critical that the proposed Reopener include all applicable TMDLs that are in effect in Los Angeles County. At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. It is unclear why the proposed scope of the reopener is so narrow. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well? This seems like a logical extension of the Reopener and would require little staff resources.

Also of note, the plethora of water quality issues in the Malibu Creek Watershed has dominated the discussion at several Board hearings over the past year. In order to improve water quality in this area, enforceable TMDLs are critical. If nutrient WLAs and LAs were in the L.A. MS4 permit, then the Malibu Creek watershed TMDLs would finally be enforceable. This is a critical tool in catalyzing any significant progress towards water quality standards attainment in the watershed. Thus, the Regional Board should also include the Malibu Nutrients and Bacteria TMDLs in the Reopener.



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IV. The Regional Board Should Clarify that Compton Creek is Covered by the L.A. River Trash TMDL.

At the July 16, 2009 L.A. Regional Board hearing on the 2008 303(d) List in response to public and Board inquiry, staff noted that the Compton Creek Trash impairment listing would be addressed under the L.A. River Trash TMDL. In the Workshop presentation, staff included "Los Angeles River Tributaries" in the PowerPoint slide addressing the reopener scope. Staff should specify in the reopener that Compton Creek is included in the scope of the TMDL so that there is no ambiguity.

In sum, we strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load. This action is consistent with the law and previous Regional Board and State Board action. Also this route is clearly described in the adopted L.A. River Trash TMDL: "This TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.)." However, we urge staff to expand the scope to ensure that all adopted TMDLs are enforceable, which in turn will lead to improved water quality in Region 4.

Sincerely,

Kirsten James
Water Quality Director

Mark Gold, D. Env
President

Los Angeles Stormwater Quality Partnership

Los Angeles



Stormwater Quality Partnership

Partner Cities:

Agoura Hills
Azusa
Beverly Hills
Calabasas
Hidden Hills
Monrovia
Norwalk
Rancho Palos Verdes
Westlake Village

July 28, 2009

Mr. Ivar Ridgeway
Stormwater Permitting Unit
Regional Water Quality Control Board – Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Request for input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Dear Mr. Ridgeway:

Thank you for this opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We plan to attend the July 29 staff workshop on this topic as well.

As you know, a growing number of cities are coming together as a new organization – the Los Angeles Stormwater Quality Partnership (LASQP). The purpose of LASQP is to establish a new kind of continuing and sustained working relationship between the municipal stormwater permittees and the Regional Water Board – a relationship focused on improving stormwater quality through a constructive and collaborative effort.

LASQP supports and incorporates by reference the comments made by its member cities regarding using a different approach (i.e., the best management practices-based approach) than that used for the Santa Monica Bay Beaches Bacteria Dry Weather TMDL to incorporate conditions in the Los Angeles County MS4 permit consistent with the Los Angeles River Trash TMDL. The approach LASQP and its member cities are recommending is consistent with the approach already taken in implementing the Los Angeles River Trash TMDL and it is consistent with that used by other Regional Water Boards. It is also consistent with USEPA's official guidance¹ (enclosed), and it would have the advantage of recognizing and building on the very significant level of best management practice implementation already conducted in response to the Los Angeles River Trash TMDL. Some of the reasons, and the benefits of designing the permit provisions using the best management practices approach are clearly articulated in our member cities' letters. Another major reason and benefit is consistency with other Regional Water Boards.

¹ *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*; USEPA Memorandum from Robert H. Wayland III, Director – Office of Wetlands, Oceans and Watersheds and James A. Hanlon, Director – Office of Wastewater Management to Water Division Directors Regions 1-10; November 22, 2002.

LASQP comments on request for input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Best management practices approach is consistent with other Regional Water Boards

The San Francisco Bay Regional Water Board is using a BMP approach to incorporate the waste load allocations (WLAs) from three TMDLs (Mercury-San Francisco Bay; Pesticides-Bay Area Urban Creeks; and PCBs-San Francisco Bay) into the soon-to-be-adopted municipal regional permit (MRP), which is a Bay Area-wide permit covering all 77 Phase I MS4s in the San Francisco Bay Area. The MRP will be a 4th generation permit for a couple of the larger countywide stormwater programs (i.e., Santa Clara Valley, Alameda) and a 3rd generation permit for others. So the permit reflects a high level of experience among both the permittees and the Regional Water Board staff.

Being consistent is also very important in the Water Board system. The Water Quality Coordinating Committee (WQCC), a leadership body of the Water Boards, has discussed the consistency issue at some length. As part of that discussion, the WQCC established a clear policy statement²:

At their October 2006 meeting the Water Boards Water Quality Coordinating Committee (WQCC) adopted the following:

- *On questions of law and overarching policy the State Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action.*
- *Water Boards are committed to developing procedures and policies to minimize inappropriate inconsistency.*

This commitment by the Water Boards to consistency across the regions and statewide was further strengthened in the Water Boards' Strategic Plan³ adopted just last year.

"Consistency...

Enhancing consistency across the Water Boards will ensure that our processes are effective, efficient, and predictable, and promote fair and equitable application of the laws, regulations, policies, and procedures."

With the incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit, the Los Angeles Regional Water Board has an opportunity to significantly enhance consistency, not only across the Water Boards, but to remain internally consistent regarding implementation of the Los Angeles River Trash TMDL and consistent with USEPA policy by using the best management practices-based approach.

Thank you for the opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We look

² Water Boards Strategic Planning Stakeholder Summit workbook, March 12-13, 2007.

³ Strategic Plan Update: 2008-2012, State Water Board, September 2008.

LASQP comments on request for input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

forward to continuing to work with you on these issues. Feel free to contact me with questions.

Sincerely,



Geoff Brosseau
Environmental Management / Technical Consultant - LASQP

encl: *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, USEPA*

cc: LASQP member cities

July 28, 2009

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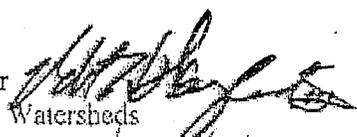
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

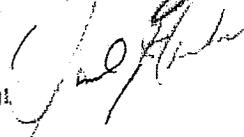
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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs

FROM: Robert H. Wayland, III, Director 
Office of Wetlands, Oceans and Watersheds

James A. Hanlon, Director 
Office of Wastewater Management

TO: Water Division Directors
Regions 1 - 10

This memorandum clarifies existing EPA regulatory requirements for, and provides guidance on, establishing wasteload allocations (WLAs) for storm water discharges in total maximum daily loads (TMDLs) approved or established by EPA. It also addresses the establishment of water quality-based effluent limits (WQBELs) and conditions in National Pollutant Discharge Elimination System (NPDES) permits based on the WLAs for storm water discharges in TMDLs. The key points presented in this memorandum are as follows:

NPDES-regulated storm water discharges must be addressed by the wasteload allocation component of a TMDL. See 40 C.F.R. § 130.2(h).

NPDES-regulated storm water discharges may not be addressed by the load allocation (LA) component of a TMDL. See 40 C.F.R. § 130.2 (g) & (h).

Storm water discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL. See 40 C.F.R. § 130.2(g).

It may be reasonable to express allocations for NPDES-regulated storm water discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs. See 40 C.F.R. § 130.2(i). In cases where wasteload allocations

are developed for categories of discharges, these categories should be defined as narrowly as available information allows.

The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.

NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.

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.

When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. See 40 C.F.R. § 122.44(i). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

This memorandum is organized as follows:

- (I). Regulatory basis for including NPDES-regulated storm water discharges in WLAs in TMDLs;
- (II). Options for addressing storm water in TMDLs; and

- (III). Determining effluent limits in NPDES permits for storm water discharges consistent with the WLA

(I). Regulatory Basis for Including NPDES-regulated Storm Water Discharges in WLAs in TMDLs

As part of the 1987 amendments to the CWA, Congress added Section 402(p) to the Act to cover discharges composed entirely of storm water. Section 402(p)(2) of the Act requires permit coverage for discharges associated with industrial activity and discharges from large and medium municipal separate storm sewer systems (MS4), *i.e.*, systems serving a population over 250,000 or systems serving a population between 100,000 and 250,000, respectively. These discharges are referred to as Phase I MS4 discharges.

In addition, the Administrator was directed to study and issue regulations that designate additional storm water discharges, other than those regulated under Phase I, to be regulated in order to protect water quality. EPA issued regulations on December 8, 1999 (64 FR 68722), expanding the NPDES storm water program to include discharges from smaller MS4s (including all systems within "urbanized areas" and other systems serving populations less than 100,000) and storm water discharges from construction sites that disturb one to five acres, with opportunities for area-specific exclusions. This program expansion is referred to as Phase II.

Section 402(p) also specifies the levels of control to be incorporated into NPDES storm water permits depending on the source (industrial versus municipal storm water). Permits for storm water discharges associated with industrial activity are to require compliance with all applicable provisions of Sections 301 and 402 of the CWA, *i.e.*, all technology-based and water quality-based requirements. See 33 U.S.C. §1342(p)(3)(A). Permits for discharges from MS4s, however, "shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." See 33 U.S.C. §1342(p)(3)(B)(iii).

Storm water discharges that are regulated under Phase I or Phase II of the NPDES storm water program are point sources that must be included in the WLA portion of a TMDL. See 40 C.F.R. § 130.2(h). Storm water discharges that are not currently subject to Phase I or Phase II of the NPDES storm water program are not required to obtain NPDES permits. 33 U.S.C. §1342(p)(1) & (p)(6). Therefore, for regulatory purposes, they are analogous to nonpoint sources and may be included in the LA portion of a TMDL. See 40 C.F.R. § 130.2(g).

(II). Options for Addressing Storm Water in TMDLs

Decisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data. The amount of storm water data available for a TMDL varies from location to location. Nevertheless, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges

(in the form of WLAs) and unregulated storm water (in the form of LAs). It may be reasonable to quantify the allocations through estimates or extrapolations, based either on knowledge of land use patterns and associated literature values for pollutant loadings or on actual, albeit limited, loading information. EPA recognizes that these allocations might be fairly rudimentary because of data limitations.

EPA also recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis. In this situation, EPA recommends expressing the wasteload allocation in the TMDL as either a single number for all NPDES-regulated storm water discharges, or when information allows, as different WLAs for different identifiable categories, e.g., municipal storm water as distinguished from storm water discharges from construction sites or municipal storm water discharges from City A as distinguished from City B. These categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial storm water sources or dischargers).

(III). Determining Effluent Limits in NPDES Permits for Storm Water Discharges Consistent with the WLA

Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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.

Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 CFR § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this.

EPA expects that the NPDES permitting authority will review the information provided by the TMDL, see 40 C.F.R. § 122.44(d)(1)(vii)(B), and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit. Where BMPs are used, EPA recommends that the permit provide a mechanism to require use of expanded or better-tailored BMPs when monitoring demonstrates they are necessary to implement the WLA and protect water quality.

Where the NPDES permitting authority allows for a choice of BMPs, a discussion of the BMP selection and assumptions needs to be included in the permit's administrative record, including the fact sheet when one is required. 40 C.F.R. §§ 124.8, 124.9 & 124.18. For general permits, this may be included in the storm water pollution prevention plan required by the permit. See 40 C.F.R. § 122.28. Permitting authorities may require the permittee to provide supporting information, such as how the permittee designed its management plan to address the WLA(s). See 40 C.F.R. § 122.28. The NPDES permit must require the monitoring necessary to assure compliance with permit limitations, although the permitting authority has the discretion under EPA's regulations to decide the frequency of such monitoring. See 40 CFR § 122.44(i). EPA recommends that such permits require collecting data on the actual performance of the BMPs. These additional data may provide a basis for revised management measures. The monitoring data are likely to have other uses as well. For example, the monitoring data might indicate if it is necessary to adjust the BMPs. Any monitoring for storm water required as part of the permit should be consistent with the state's overall assessment and monitoring strategy.

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," i.e., "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

This memorandum discusses existing requirements of the Clean Water Act (CWA) and codified in the TMDL and NPDES implementing regulations. Those CWA provisions and regulations contain legally binding requirements. This document describes these requirements; it does not substitute for those provisions or regulations. The recommendations in this memorandum are not binding; indeed, there may be other approaches that would be appropriate

in particular situations. When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation. EPA may change this guidance in the future.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Charles Sutfin, Director of the Assessment and Watershed Protection Division.

cc:

Water Quality Branch Chiefs
Regions 1 - 10

Permit Branch Chiefs
Regions 1 - 10

Richards/Watson/ Gershon

2009 JUL 28 4 04 00

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GLENN R. WATSON
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July 28, 2009

Hand Delivery

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

Re: *Proposed Modifications to NPDES Storm Water Discharge Permit to Incorporate Provisions of the Los Angeles River Watershed Trash TMDL Into Storm Water Discharge Permit (NPDES NO. CAS004001)*

Dear Mr. Ridgeway:

This will provide the initial comments of the Cities of, Monrovia, San Fernando, San Marino and South El Monte ("Cities"), co-permittees under the above-referenced storm water permit on the Board's July 6, 2009 letter. In the July 6, 2009 letter, the Regional Water Quality Control Board ("Board") indicated that it will consider modifications to incorporate the trash TMDL for the Los Angeles River Watershed into the existing NPDES stormwater permit. The Cities reserve the right to submit additional comments at such time as there is a staff report detailing the exact proposed permit modifications to be considered by the Board. In the interim, however, the Cities wanted to make the following initial observations:

- (1) Like many other cities, each of these Cities has an active program to implement "Best Management Practices" (BMP) in controlling the discharges to its storm water system. Each of the cities has senior staff members who ensure close attention to BMP activities.
- (2) For both legal and practical reasons, the Cities believes that any effort to incorporate strict number limits of the gallons of "trash" that can be discharged from its storm water system (as suggested in Table 7-2.2 of the TMDL) is infeasible and not legally required. The Cities wish to highlight just a few reasons why this is so.
 - (a) Practically, the elimination of all trash (as required by the TMDL) in storm water discharges is difficult to measure and would require heroic efforts during times of winter storms.

Mr. Ivar Ridgeway
July 28, 2009
Page 2

- (b) Scientifically, the measuring of "trash" (itself a wide category) at a point that will effectively capture just a particular City's storm water discharges (and no other entities storm water discharge) is a process that the Cities (and their staff) do not currently comprehend. Yet, Table 7-2.2 referenced in the July 6, 2009 letter suggesting permit modifications requires a relatively exact measure. The City is permitted no more than a "baseline" level of a specified amount expressed in terms of gallons or pounds of trash, with reductions starting at 40% of that baseline in the first full year of implementation. It is unclear (at best) how and by what method "pounds of trash" coming from the City's storm water system will be measured.
- (c) Legally, the City does not understand why the Regional Board feels compelled to move to strict numeric limits in light of EPA Policy Guidance, the 2006 State Board's Blue Ribbon Panel on the Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water, or any other standard. The July 6, 2009 letter references one subpart of the EPA NPDES regulations, specifically 40 C.F.R. Section 122.44(d). Of course, that same Section 122.44 also contains subpart (k) which allows the use of "Best Management Practices" (BMPS) to control or abate the discharge of pollutants in specified conditions including when:

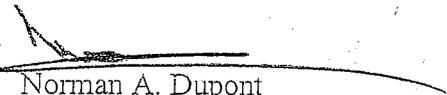
"(3) Numeric effluent limitations are infeasible; or
(4) The practices are reasonably necessary to achieve effluent limitations an standards or to carry out the purposes and intent of the CWA [Clean Water Act]." 40 C.F.R. Section 122.44(k)(3) and (4)."

The Cities submits that subpart (k) of the federal regulations compel the exact opposition conclusion of Board staff in this instance—BMPs should be utilized in lieu of strict numeric limits in order to effectuate the purposes and intent of the Clean Water Act and because numeric effluent limitations are infeasible.

Mr. Ivar Ridgeway
July 28, 2009
Page 3

The Cities of Monrovia, San Fernando, San Marino, and South El Monte look forward to continuing a mutual dialogue with the Board and Board staff on this issue.

Sincerely,



Norman A. Dupont

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Santa Monica Baykeeper



July 28, 2009

Ivar Ridgeway
Storm Water Permitting Unit
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RE: Public Workshop on Los Angeles Municipal Storm Water Permit (NPDES No. CAS004001) Reopener to Incorporate Provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load

Dear Mr. Ridgeway,

On behalf of the Santa Monica Baykeeper and its 6,000 members and supporters in the Los Angeles area, please accept the following comments on the above-referenced matter. The Santa Monica Baykeeper ("Baykeeper") supports the Regional Board's decision to begin the process of amending the Los Angeles Municipal Storm Water Permit (NPDES No. CAS004001) ("Municipal Storm Water Permit") to incorporate the wasteload allocations ("WLA") of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL"). Because the TMDL became effective on September 23, 2008 and its first compliance deadline has already passed, we strongly urge the Regional Board to incorporate the TMDL's WLAs and implementation schedule as swiftly as possible. Only then can the Los Angeles River watershed be adequately protected from the continued disastrous impacts of trash.

I. The Municipal Storm Water Permit Reopener to Incorporate the LA River Trash TMDL Is Required by the Clean Water Act and the California Water Code

Under the Clean Water Act's implementing regulations, NPDES permit such as the Municipal Storm Water Permit must be consistent with the assumptions and requirements of any available waste load allocations. 40 C.F.R. § 122.44 (d)(4)(vii)(B). Section 13263 of the California Water Code requires that permits issued by California's water boards must "implement any relevant water quality control plans" such as the Los Angeles Basin Plan. Water Code, § 13263 (a). Indeed, the Municipal Storm Water Permit complies with these federal and state law mandates by providing for modifications of its requirements to "[i]ncorporate ... amendments to the [Los Angeles] Basin Plan." Municipal Storm Water Permit (as amended), at 73.

The LA River Trash TMDL became effective as a Basin Plan amendment in September 2008. In addition, the WLAs of the LA River Trash TMDL apply to stormwater dischargers and the LA River Trash TMDL Basin Plan amendment specifically stated that it "will be implemented through stormwater permits." Los Angeles Basin Plan, Chapter 7, Table 7-2.1. Therefore, the Regional Board must incorporate the LA River Trash TMDL into the Municipal Storm Water Permit because it is both a Los Angeles Basin Plan amendment and contains WLAs that must be part of the permit as mandated by the Clean Water Act.¹

¹ The Regional Board has already successfully reopened the Municipal Storm Water Permit to incorporate the Santa Monica Bay Beaches Bacteria TMDL for dry weather and the Marina del Rey Harbor and Mother's Beach Bacteria TMDL for summer dry weather.

II. Municipal Storm Water Dischargers Have Had Adequate Time to Take Measures to Come into Compliance with the TMDL and a Permit Reopener Is Thus Timely

The LA River Trash TMDL was originally adopted by the Los Angeles Regional Water Quality Control Board ("Regional Board") on September 19, 2001. The TMDL was subsequently approved by the State Water Resources Control Board and the U.S. EPA and became effective on September 23, 2002. The WLAs and all other elements of the LA River Trash TMDL were later upheld by the California Court of Appeal on January 26, 2006.² As a result, all dischargers covered by the Municipal Storm Water have been aware both of the WLAs and the implementation measures and deadlines envisioned by the LA River Trash TMDL since at least January 2006. Moreover, none of the permittees has challenged the re-adoption of the LA River Trash TMDL on August 9, 2007.

In these circumstances, all permittees under the Municipal Storm Water Permit have had ample time to develop measures to achieve compliance with the LA River Trash TMDL. This combined with the TMDL's measured approach for reaching the "zero trash" numeric target over a period of eight years and the provision allowing permittees to show compliance by using a full capture system more than adequately accommodates any concerns related to the need for more time to meet the TMDL's requirements. Therefore, the Regional Board should incorporate the clear requirements of the LA River Trash TMDL into the Municipal Storm Water Permit expeditiously.

III. The Regional Board Should Clarify in the Permit Reopener that the LA River Trash TMDL Includes to Compton Creek

In the recent review of the 303(d) list of impaired waters in the Los Angeles Region, the Regional Board stated that it will not be developing a trash TMDL for Compton Creek as the Compton Creek Trash TMDL is included in the LA River Trash TMDL. Based on these assurances, we request the Regional Board confirm that Compton Creek is one of the waterbodies to which the LA River Trash TMDL would apply through the Municipal Storm Water Permit.

IV. Conclusion

For the reasons stated above, we support the Regional Board's decision to reopen the Municipal Storm Water Permit and incorporate the LA River Trash TMDL. The LA River Trash TMDL's requirements are clear and will be easily translated into Municipal Storm Water Permit requirements in a manner similar to the incorporation of the Santa Monica Bay Beaches Bacteria TMDL for summer dry weather and the Marina del Rey Harbor Mother's Beach and Back Basins TMDL. As evident from the most recent iteration of the Los Angeles Region 303(d) list of impaired waters, the Los Angeles River watershed remains impaired for trash discharged from stormdrains. Every wet season, tons of trash are carried by the Los Angeles River and its tributaries to our beaches and coastal waters, harming marine life and beach-goers. The swift incorporation of the LA River Watershed Trash TMDL into the Municipal Storm Water Permit will provide the impaired watershed with a necessary and long-overdue protection.

Thank you for the opportunity to submit these comments. If you have any questions, please contact Tatiana Gaur at (310) 305-9645.

Sincerely,

/s/

Tatiana Gaur
Staff Attorney
Santa Monica Baykeeper

² The TMDL was set aside so that the Regional Board can adequately complete an environmental review. On August 9, 2007 the Regional Board re-adopted the LA River Trash TMDL and approved the supporting environmental review documentation.

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July 27, 2009

VIA OVERNITE EXPRESS

Mr. Ivar Ridgeway ✓
Storm Water Permitting Unit
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RECEIVED
2009 JUL 28 AM 10:33
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

Re: Comments on Modifications to Incorporate Provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load (TMDL) into the Los Angeles County Municipal Stormwater Discharge Permit (NPDES No. CAS004001)

Dear Mr. Ridgeway:

These comments are being submitted on behalf of the Cities of Downey and Signal Hill, and the ad hoc group of cities known as the Coalition for Practical Regulation¹ (hereafter collectively "Cities"), in connection with a July 6, 2009 Notice from the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") requesting comments and scheduling a workshop on proposed action to incorporate provisions of the Los Angeles River Trash Total Maximum Daily Load ("TMDL") into the existing Los Angeles County Municipal Stormwater Discharge Permit ("NPDES No. CAS004001," hereafter "NPDES Permit" or "Permit").

As further discussed below and as supported by the attached documentation, the Cities strongly believe it is premature at this time to be incorporating either this particular TMDL or any TMDL into the existing NPDES Permit, in light of the Orange County Superior Court's recent decision in *City of Arcadia v. State Board*, OCSC Case No. 06CC02974 (the "*Arcadia*

¹ The Coalition for Practical Regulation also known as "CPR" is an ad hoc group of municipalities in Los Angeles County committed to obtaining clean water through cost-effective and reasonable storm water regulations, and consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.

Mr. Ivar Ridgeway
July 27, 2009
Page 2

Case”), and given that the term of the existing NPDES Permit expired as of December 13, 2006, with various renewal applications presently pending before the Regional Board for the renewal of the NPDES Permit (including separate permit applications having been filed by the Cities of Downey and Signal Hill, as well as by other cities). As such, any incorporation of this TMDL or any other TMDL, should be done in conjunction with the adoption of the renewed NPDES Permits through the pending permit applications, i.e., Reports of Waste Discharge (“ROWD”) submissions, and only after all Appeals in the *Arcadia* Case have been completed, and if the Superior Court’s Decision therein has been upheld (Exhibit “1” hereto), then only after the changes resulting from the deletion of the “potential” use designations and the Water Code Sections 13241/13000 analysis of the Water Quality Standards (“Standards”) have been made.

Moreover, at such time as the required review of the Standards in the Basin Plan has been completed, as required by the Superior Court in the *Arcadia* Case,² and the Regional Board is considering the incorporation of this or a revised trash TMDL or TMDLs into any Municipal NPDES Permit, any incorporation of the TMDL into a Municipal NPDES Permit must then take into account the following:

(1) Any incorporation of a TMDL into a Municipal NPDES Permit in the Los Angeles Region is premature at this time.

(2) That Federal law and State policy do not require or even recommend compliance with TMDLs through the use of numeric limits, i.e., strict compliance with the waste load allocations (“WLAs”) in a TMDL. Instead, both State and federal policy provide for the compliance with TMDLs through the use of iterative Maximum Extent Practicable (“MEP”) compliant BMPs, and not through strict compliance with WLAs (which are a form of numeric effluent limits).

(3) Any amendment to or reissuance of an NPDES Permit to incorporate new terms, as confirmed by the California Supreme Court in the *City of Burbank v. State Board (“Burbank”)* (2005) 35 Cal.4th 613, can only be adopted once the factors and considerations required under Water Code section 13241, as well as section 13000, have first been met.

(4) To the extent any monitoring or other requirements involving an investigation of water quality is to be required as part of the incorporation of a TMDL into a Municipal NPDES Permit, Water Code Sections 13225, 13165 and 13257 all require that a cost/benefit analysis be conducted.

² The Cities acknowledge that the *Arcadia* Case is presently on appeal but contend the Superior Court’s determinations on the need to comply with the requirements of Water Code Sections 13241/13000, and the need to delete the “potential” use designations, will be upheld.

Mr. Ivar Ridgeway
July 27, 2009
Page 3

(5) To the extent this or any other TMDL is to be incorporated into a Municipal NPDES Permit, in a fashion that is not otherwise required by federal law, such a requirement cannot be imposed unless the State first provides funding for this non-federal mandate to the Cities, consistent with the requirements of the California Constitution.

I. INCORPORATION OF THE TRASH TMDL INTO ANY MUNICIPAL NPDES PERMIT IS PREMATURE.

A. No TMDL Should Be Incorporated Into The NPDES Permit Until The Arcadia Case Has Been Resolved And The Review And Necessary Revisions Of The Water Quality Standards Ordered Therein, Completed.

The incorporation of a TMDL into an NPDES Permit is, in effect, the final step in the process of seeking to enforce Water Quality Standards as against storm water ("Stormwater")³ dischargers. As recognized by the Court of Appeal in *City of Arcadia v. State Board* (2006) 135 Cal.App.4th 1392, 1404, "[a] TMDL must be 'established' at a level necessary to implement the applicable water quality standards." (Also see *City of Arcadia v. EPA* (N.D. Cal. 2003) 265 F.Supp.2d 1142, 1145 ["each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES Permits or establishing nonpoint source controls."].)

In the recent *Arcadia* Case, a number of cities successfully challenged the propriety of the Standards in the Basin Plan, and particularly the Water Boards' failure to conduct a Water Code Section 13241/13000 analysis during the course of the 2004 Triennial Review, and their failure to correct the improperly designated "potential" use designations in the Basin Plan. As discussed below, the trial court in the *Arcadia* Case determined that the State and Regional

³ The term "storm water" is defined under federal law to include both dry weather and wet weather runoff, i.e., "storm water" plainly includes not only precipitation events but also urban runoff. (See Exhibit "2" hereto, 11/26/2008 Judgment of Superior Court in the *Arcadia* Case, p. 2, fn. 2, citing 40 C.F.R. § 122.26(b)(13) and finding as follows: "Federal law defines 'storm water' to include urban runoff, i.e., 'surface runoff and drainage'." In their Opening Brief filed on June 11, 2009, the Appellant State and Regional Boards conceded that "storm water emanates from diffuse sources, including surface run-off following rain events (hence, 'storm water') and urban run-off." (Appellant Boards Opening Brief in the *Arcadia* Case, p. 9, n. 5.) Also see the Opening Appellate Brief of the Appellants/Intervenors NRDC, et al. filed on 6/09/09 in *City of Arcadia v. State Board*, Case No. G041545, p. 6, n. 3, where said Appellants, stated 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 discharger storm sewer systems. A definition of stormwater includes 'stormwater runoff, snow melt runoff, and surface runoff and drainage.' (40 C.F.R. § 122.26(b)(13).")

Mr. Ivar Ridgeway
July 27, 2009
Page 4

Boards were now required to conduct this 13241/13000 review and to make appropriate revisions to the Standards, including deleting the "potential" use designation.

Thus, any consideration of the incorporation of the trash TMDL, or any other TMDL, into a Municipal NPDES Permit for the Los Angeles Region, should be delayed until such time as the propriety of the Standards upon which the TMDL is based, have been reviewed and corrected. For example, in this case, the trash TMDL is based on various "potential" use designations, which as the Superior Court found in the *Arcadia* Case is improper, and thus, any attempt to enforce the trash TMDL to protect mere "potential" beneficial uses, will likely be a significant waste of scarce public resources as the Standards are likely to change.

Moreover, although the *Arcadia* Case is presently on appeal, at a minimum, in light of the significance of the Superior Court's rulings that the "potential" use designations are improper and are to be replaced with other more appropriate use designation, and that other changes to the Standards may be necessary once the review under Water Code Sections 13241 and 13000 has been completed, any decision to attempt to enforce the existing Standards through the incorporation of the trash TMDL or other TMDLs into a Municipal NPDES Permit, should at a minimum be delayed until such time as the *Arcadia* has been finally decided. To proceed with the incorporation of this trash TMDL into the existing NPDES Permit, blindly, understanding that the Standards supporting the TMDL have been adjudicated as being defective, and thus, that the TMDL itself may need to be revised, is arbitrary and capricious action that will only lead to further litigation.

In the *Arcadia* Case, with respect to the propriety of the Standards in the existing Basin Plan as they are to be applied to Stormwater, in a Notice of Ruling/Decision dated March 13, 2008 (Exhibit "1" hereto, hereafter "Decision"), the Superior Court, the Honorable Thierry P. Colaw presiding, held, among other things, as follows:

The Standards cannot be applied to storm water without appropriate consideration of the 13241/13000 factors. There is no substantial evidence showing that the Boards considered the 13241/13000 factors before applying the Standards to storm water in the 1975 Plan Adoption, the 1994 Amendment, or the 2002 Bacteria Objective. . . . They must be considered in light of the impacts on the "dischargers" themselves. The evidence before the court shows that the Board did not intend that the Basin Plan of 1975 was to be applied to storm waters when it originally was adopted. The Respondents admit this. "[T]he regional board considered storm water to be essentially uncontrollable in 1975." [Citation.] This was confirmed by the State Board in a 1991 Order when it stated: "The Basin Plan specified requirements and

Mr. Ivar Ridgeway
July 27, 2009
Page 5

controls for 'traditional' point sources, but storm water discharges were not covered . . . The Regional Board has not amended the portions of its Basin Plan relating to storm water and urban runoff since 1975. Therefore, we conclude that the Basin Plan does not address controls on such discharges, except for the few practices listed above. **Clearly, the effluent limitations listed for other point sources are not meant to apply.** [Citation.] There is no substantial evidence in the record to show that the Boards have ever analyzed the 13241/13000 factors as they relate to storm water. (See Exhibit "1," Decision p. 5-6; bolding in original.)

Similarly the Superior Court found that the Water Boards' development of Standards based on mere "potential" uses, was inappropriate, holding:

Section 13241 does not use the word "potential" anywhere in the statute. It does describe the factors previously discussed and specifically states that a factor "to be considered" is "Past, present, and probably future beneficial uses of water." Water C. § 13241(a).

* * *

The real problem is that basing Standards on "potential" uses is inconsistent with the clear and specific requirements in the law that Boards consider "probable future" uses. It is also inconsistent with section 13000 which requires that the Boards consider the "demands being made and to be made" on state waters. (Water C. § 13000 emphasis added.) The factors listed by the Legislature in 13241 were chosen for a reason. *Bonnell v. Medical Bd. Of California* (2003) 31 Cal.App.4th 1255, 1265 [courts will "not accord deference" to an interpretation which "is incorrect in light of the unambiguous language of the statute"]. Respondents have acted contrary to the law by applying the vague "potential" use designations to storm water. (Exhibit "1," Decision, p. 5.)

In light of the fact that the trash TMDLs have been based on a set of Standards that, as of this point in time, have been determined to be defective because of the improper inclusion of "potential" use designations as well as the possible defects created by the Boards' failure to comply with Water Code Sections 13241/13000 as they relate to Stormwater, at a minimum, the

Mr. Ivar Ridgeway
July 27, 2009
Page 6

Cities respectfully request that the trash TMDL, and any other TMDL, not be incorporated into the subject NPDES Permit, or any other NPDES Permits, until such time as the final decision has been rendered in the *Arcadia* Case, and if the Superior Court's decision is upheld, until such time as the Judgment and Writ of Mandate set forth in that case have been complied with. (See Exhibits "2" and "3" hereto, the Judgment and Writ of Mandate entered in the *Arcadia* Case by the superior court.)

B. The Term Of The Existing NPDES Permit Expired On December 13, 2006, And The Incorporation Of This Or Any Other TMDL Should Be Addressed In Accordance With The Pending Renewal Process.

The existing Municipal NPDES Permit for Los Angeles County was issued on December 13, 2001, and by its own terms expired on December 13, 2006. (albeit under the federal regulations, the terms of the existing Municipal NPDES Permit are to remain in effect until a replacement permit is adopted). In accordance with the requirements of the applicable federal regulations governing the renewal of NPDES Permits, the City of Downey, the City of Signal Hill, and several other small cities within Los Angeles County, along with the County of Los Angeles and numerous other cities in the County, filed ROWDs to renew their Municipal NPDES Permit. To date, as far as the Cities are aware, none of these various ROWD applications have not been processed by the Regional Board, and it is unclear when the Regional Board will commence the renewal process. It is clear, however, that the renewal process is long overdue, as the term of the existing Municipal NPDES Permit expired well over two and one-half years ago, and that, to date, the Regional Board has not provided any justification for the delay in moving forward with the issuance of new Municipal NPDES Permits for the applying Cities.

In light of the fact that the renewal process is long overdue, and given the importance of the issue of incorporating TMDLs into a Municipal NPDES Permit, as well as the complexities created by doing so, any incorporation of the trash TMDL or any other TMDLs into the Municipal NPDES Permits, should be conducted as part of the permit renewal process. To do otherwise at this time is to proceed in a manner that is arbitrary and capricious.

Mr. Ivar Ridgeway
July 27, 2009
Page 7

II. ANY PERMIT TERM INCORPORATING A TMDL MUST BE IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW AND POLICIES.

A. Federal And State Policies Provide For The Use Of Best Management Practices ("BMPs") In Lieu Of Numeric Water Quality-Based Effluent Limitations, When Enforcing a TMDL Or Otherwise.

At the time when either this TMDL or any other TMDL is appropriately being evaluated for purposes of incorporating it into any Municipal NPDES Permit, the Regional Board must consider existing federal and State laws, as well as applicable policies governing whether and how any such TMDL is best incorporated into a Municipal NPDES Permit.

Initially it must be recognized that existing federal law does *not* require that Stormwater dischargers strictly comply with WLAs, as set forth in a TMDL, but instead only requires compliance with WLAs through the use of the maximum extent practicable ("MEP") standard, and importantly, through the use of best management practices ("BMPs"). In fact, time and again the Courts, US EPA and the State Board have all recognized that Stormwater discharges are different from traditional point source discharges, and that Stormwater must be analyzed and treated as such in accordance with the requirements of the Clean Water Act.

For example, in *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 874, the Appellate Court determined that "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.*, emphasis in original, citing 33 USC § 1342 (p)(3)(B)(iii) & *Defenders of Wildlife v. Browner* ("*Defenders*") (9th Cir. 1999) 191 F.3d 1159, 1163.)

In *Defenders, supra*, 191 F.3d 1159, relied upon by the *BIA* Court of Appeal, the Ninth Circuit similarly recognized the different approach taken by Congress when addressing storm water discharges versus industrial discharges, finding that "industrial discharges must comply strictly with state water-quality standards," with Congress choosing "not to include a similar provision for municipal storm-sewer discharges." (*Id.* at 1165.) As the *Defenders* Court held, instead, "Congress required municipal storm-sewer dischargers 'to reduce the discharge of pollutants to the maximum extent practicable'" (*Id.*) The Ninth Circuit went on to find, after reviewing the relevant portions of the Clean Water Act, that "because 33 U.S.C.

Mr. Ivar Ridgeway
July 27, 2009
Page 8

§ 1342(p)(3)(B) *is not merely silent* regarding whether municipal discharges must comply with 33 U.S.C. § 1311,” but instead 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 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 in original.)

With respect to TMDLs specifically, that WLAs within a TMDL are not required under the Clean Water Act to be strictly met, was confirmed by U.S. EPA itself in a November 22, 2002 EPA Guidance Memorandum on “Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” (Exhibit “4” hereto.) In the EPA Guidance Memorandum, EPA explained that for NPDES Permits regulating municipal storm water discharges, any water quality based effluent limit for such discharges, should be “*in the form of BMPs and that numeric limits will be used only in rare instances.*” (Exhibit “4,” p. 6, emphasis added.) The EPA recommended that “*for NPDES-regulated municipal . . . dischargers effluent limits should be expressed as best management practices (BMPs), rather than as numeric effluent limits.*” (*Id* at p. 4.) EPA went on to expressly recognize the difficulties in regulating Stormwater discharges, explaining its policy as follows:

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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. (EPA Guidance Memo, Ex. 4, p. 4.)

As such, because EPA has expressly found, particularly when it comes to the incorporation of a TMDLs into a municipal NPDES Permit, “that numeric limits will be used only in rare instances,” and because in this case, there is no evidence that this is a “rare instance” that would justify the inclusion of a numeric limit, any incorporation of the trash TMDL into a municipal NPDES Permit should be limited to the inclusion of MEP-complaint BMPs, and not the use of “numeric limits.”

Mr. Ivar Ridgeway
July 27, 2009
Page 9

In addition, the policy of the State of California is that strict numeric limits are *not* an appropriate means by which to implement the MEP standard under the Clean Water Act. The State's policy to apply the MEP standard through an iterative BMP process, and not through the use of strict numeric discharge limitations, is reflected in numerous prior orders and other documentation from the State Board. (See, e.g., 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] [Ex. 5]; State Board Order No. 96-13, p. 6 [*federal laws does not require* the [San Francisco Reg. Bd] to dictate the specific controls."] [Ex. 6]; 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.*"] [Ex. 7]; State Board Order No. 2001-11, 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.*"] [Ex. 8]; 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."] [Ex. 9]; State Board Order No. 2006-12, p. 17 [*Federal regulations do not require numeric effluent limitations for discharges of stormwater*"] [Ex. 10]; *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.*"] [Ex. 11]; and 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.*"] [Ex.12].)

In short, neither State nor federal law, nor any state and federal policy, provide for the incorporation of WLAs as strict numeric limits into a municipal NPDES Permit. In fact, they provide for the contrary, and recognize that numeric limits should only be incorporated into a municipal NPDES Permit in "rare instances" with the State Board's numeric effluent limits panel concluding that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers."

B. Any Attempt To Impose Strict Compliance With WLAs In A Stormwater Permit, Or To Impose Other Requirements That Go Beyond Federal Law Or That Do Not Exist In Federal Law, Require Compliance With Water Code Sections 13241 And 13000.

As explained by the Court of Appeal in *BIA San Diego County v. State Board*, *supra*, 124 Cal.App.4th 866, 874, in the Clean Water Act, Congress distinguished between industrial and storm water discharges and clarified that with respect to municipal storm water discharges, "the

Mr. Ivar Ridgeway
July 27, 2009
Page 10

EPA has the authority to fashion NPDES Permit requirements to meet storm water quality standards without specific numeric effluent limits” Accordingly, any attempt to proceed at this time and impose a permit term that requires strict compliance with a WLA, *i.e.*, a numeric effluent limit, is clearly a requirement that goes beyond what is compelled under federal law. As such, all aspects of State law must be adhered to before any such permit term can be adopted.

In *Burbank, supra*, 35 Cal.4th 613, the California Supreme Court held that to the extent the NPDES Permit provisions in that case were not compelled by federal law, that the Boards were required to consider their “economic” impacts on the dischargers themselves, with the Court finding that the Water Boards must analyze the “dischargers cost of compliance.” (*Id* at 618.) The Supreme Court in *Burbank* also specifically interpreted the need to consider “economics” as requiring the consideration of the “cost of compliance” on the cities involved in that particular case. (*Id* at 625.)

Sections 13000 and 13241 of the Porter-Cologne Act clearly require a consideration of a series of factors in not only establishing water quality policy and developing water quality standards, but also in developing applicable permit terms. (*See City of Burbank v. State Board, supra*, 35 Cal.4th 613, 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 goal of the Porter-Cologne Act is 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.” (Water Code § 13000; *see also Burbank*, 35 Cal.4th 613, 618.)

Accordingly, when establishing water quality objectives, the Water Boards must “ensure the reasonable protection of beneficial uses,” recognizing that it “may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses.” (Water Code § 13241.) Section 13241 thus compels the Boards to consider the following factors, including when developing NPDES Permit terms (*see Burbank*, 35 Cal.4th 613, 625):

- (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.

Mr. Ivar Ridgeway
July 27, 2009
Page 11

- (d) **Economic considerations.**
- (e) **The need for developing housing in the region.**
- (f) **The need to develop and use recycled water.**

In *Burbank, supra*, 35 Cal.4th 613, the California Supreme Court held that: "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 cost of compliance when setting effluent limitations in a waste water discharge permit." (*Id* at 625, emphases in original.)

In *U.S. v. State Board* (1986) 182 Cal.App.3d 82, the State Board issued revised water quality standards for salinity control because of changed circumstances which revealed new information about the adverse affects of salinity on the Sacramento-San Joaquin Delta ("Delta"). (*Id* at 115.) The State Board approved the revised standards with the understanding it would impose more stringent salinity controls in the future. In invalidating the revised standards, the court recognized the importance of complying with the policies and factors set forth under Water Code sections 13000 and 13241, and emphasized section 13241's requirement of an analysis of "economics." The Court also stressed the importance of establishing water quality objectives which are "reasonable," and the need for adopting "reasonable standards consistent with overall State-wide interests".

In formulating a water quality control plan, the Board is invested with wide authority "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.**" (§ 13000.) In fulfilling its statutory imperative, the Board is required to "establish such water quality objectives . . . as in its judgment will ensure the **reasonable protection** of beneficial uses . . ." (§ 13241), a conceptual classification far-reaching in scope. (*Id* at 109-110, emphasis added.)

* * *

The Board's obligation is to attain the highest reasonable water quality "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." (§13000, italics added.) (*Id* at 116.)

Mr. Ivar Ridgeway
July 27, 2009
Page 12

* * *

In performing its dual role, including development of water quality objectives, the Board is directed to consider not only the availability of unappropriated water (§ 174) but also all competing demands for water in determining what is a reasonable level of water quality protection (§ 13000). In addition, the Board must consider . . . “[water] quality conditions that could reasonably be achieved through the coordinated control of *all* factors which affect water quality in the area.” (*Id* at 118, *emph. added.*)

Justice Brown in her concurring opinion in *Burbank*, made several significant comments regarding the importance of considering “economics” in particular, and the Water Code section 13241 factors in general, when considering including numeric effluent limitations in an NPDES Permit:

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.

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:

Mr. Ivar Ridgeway
July 27, 2009
Page 13

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.)

The above-referenced statutory, regulatory and case authority all confirm, not only that municipal dischargers are to be treated differently than other industrial dischargers, but also that numeric limits should not be applied to any municipal discharger at this time. “It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers.” (Numeric Limits Panel Report, Exhibit “9,” p. 8.) Accordingly, strict compliance with WLAs in the trash TMDL or any other TMDL, should not be required at this time, and to the extent a WLA is attempted to be incorporated into a municipal NPDES Permit, and enforced as such and through a means other than through the use of the MEP-complaint BMPs, all applicable requirements of State law, including the analysis required under Water Code Sections 13241/13000, must be met.

C. Any Additional Monitoring Or Required Investigation Into Water Quality Would Trigger The Need For A Cost-Benefit Analysis Pursuant To Water Code Sections 13225, 13165 And 13267.

Before incorporating any aspect of a TMDL into a municipal NPDES Permit, the Regional Board must also give consideration to the potential need to conduct a cost-benefit analysis, in accordance with Water Code Sections 13225(c), 13165 and 13267. That is, to the extent the Regional Board seeks to require a city to investigate and report on technical factors involved in water quality control, or to require a city to implement additional monitoring requirements, a cost-benefit analysis will need to be performed beforehand to justify the inclusion of any such additional reporting and monitoring requirement.

Under these Water Code Sections, where any investigation, monitoring or reporting requirements are imposed upon a city, the State and Regional Boards are required to consider the burdens of conducting the analysis, and preparing the monitoring reports, and may only require such reporting and monitoring, where “the burden, including costs, of such reports” bears “a reasonable relationship to the need for the report and the benefits to be obtained from the reports.” Moreover, under Water Code Section 13267 specifically, where such an investigation or reports are required, “the regional board shall provide the person with a written explanation

Mr. Ivar Ridgeway
July 27, 2009
Page 14

with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.” (Water Code § 13267.)

Likewise, under Water Code Section 13225(c), a regional board only has the authority to “require as necessary any state or local agency to investigate and report on any technical factors involved in water quality 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.” (Water Code § 13225(c); *also see* Section 13165 placing an identical obligation on the State Board.)

Accordingly, any incorporation of the trash TMDL, or any other TMDL, into a Municipal NPDES Permit, that includes additional reporting or monitoring requirements, can only be imposed upon the Cities after a cost-benefit analysis, showing that the costs do not exceed the benefits of such requirements, has been conducted.

D. Any Added Mandates On The Cities With New Permit Forms That Are Not Mandated By Federal Law, Must Be Funded In Accordance With The California Constitution.

Finally, to the extent the Regional Board seeks to impose new requirements in the existing NPDES Permit that go beyond what is otherwise required under federal law, i.e., to force the Cities to strictly comply with the WLAs, as opposed to requiring compliance with the WLAs through the use of MEP-complaint BMPs, such a requirement and any other accompanying mandates that go beyond the requirements of federal law, can only be imposed where adequate funds have been provided to the cities to comply with these mandates.

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.*)

Mr. Ivar Ridgeway
July 27, 2009
Page 15

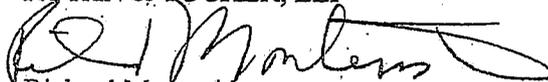
Accordingly, to the extent the Regional Board will seek to impose additional requirements that exceed the requirements provided for under federal law, it is seeking to impose new mandates upon municipalities that can only be imposed where necessary funding has been provided to the cities to comply with such new mandates. The incorporation of new permit requirements that are not mandated by federal law, and that go unfunded by the State, would violate Article XIII B, Section 6 of the California Constitution. (*See County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 914 [“We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances.”].)

III. CONCLUSION.

The Cities appreciate the opportunity to submit these legal comments, and based on the above and the attached exhibits, respectfully request that the trash TMDL not be incorporated into the subject NPDES Permit until such time as (1) the *Arcadis* Case has been finally concluded, and if the Superior Court’s Decision is upheld, until after the required 13241/13000 analysis has been completed, and the necessary changes have been made to the Standards (including correcting the “potential” use designations), and (2) the pending ROWDs have been processed, with the trash TMDL and other TMDLs being addressed in conjunction with the development of the renewed Municipal NPDES Permits. Further, once commenced, any incorporation of this trash TMDL, or any other TMDL, into a Municipal NPDES Permit, must be conducted in accordance with all applicable State and federal laws and governing policy.⁴

Sincerely,

RUTAN & TUCKER, LLP



Richard Monteideo

Enclosures
RM:ctm

⁴ It should also be recognized that any proceeding to modify an existing NPDES Permit is an “adjudicative” proceeding, and that, because of the complex factual and legal issues involved in this case to incorporate the trash TMDL into the Permit, as well as the highly controversial nature of the issues involved in incorporating the TMDL into the NPDES Permit, *the procedures for formal adjudicative hearings should be followed.* (*See, e.g., State Board Order No. WQ 2000-11, p. 14, fn. 25* [“For future adjudicative proceedings that are highly controversial or involve complex factual or legal issues, we encourage the regional water boards to follow the procedures for formal hearings set forth in Cal. Code of Regs., tit. 23, section 648 et seq.”] [Ex. 8 hereto].)

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Comments received During October 8-November 9, 2009
Public Comment Period

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|-----|--|--------|
| 1. | City of Hidden Hills | 14-219 |
| 2. | City of Los Angles | 14-224 |
| 3. | City of Monrovia, DPW | 14-228 |
| 4. | City of San Fernando | 14-231 |
| 5. | City of San Marino | 14-234 |
| 6. | City of South El Monte | 14-239 |
| 7. | City of Vernon | 14-242 |
| 8. | County of Los Angeles #1 | 14-245 |
| 9. | County of Los Angeles #2 | 14-258 |
| 10. | Joyce Dillard | 14-270 |
| 11. | Heal the bay | 14-272 |
| 12. | Los Angeles Stormwater Quality Partnership | 14-278 |
| 13. | Rutan, Attorney at Law | 14-281 |
| 14. | Ray Tahir | 14-315 |

City of Hidden Hills



City of Hidden Hills

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NOV 9 PM 4 09

November 6, 2009

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, California 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of Hidden Hills ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit. A copy of that letter is attached for your convenience. The City does, however, have the following two additional concerns regarding the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the LA MS4 Permit:

1) **The Clean Water Act's Prohibition on Antibacksliding**

The City appreciates the fact that the proposed permit revisions include a proposed review and reconsideration of the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocations has been achieved. The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. As you know, 33 USC §1342 (o) and 40 C.F.R. §122.44(1)(1) (which contain the antibacksliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. The City would greatly appreciate a response from the Regional Board on this specific issue.

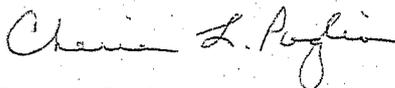
2) The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear

It is not clear when the review/reconsideration step of the final Waste Load Allocations will take place. Table 6 (Implementation Schedule) of the LA River Trash TMDL provides that a 50% reduction of the Baseline Waste Allocations must be achieved by September 2009 and the compliance point of 50% of the Baseline Waste Load Allocations must be reached by September 2010. Furthermore, Page 19 of the Fact Sheet indicates that the Los Angeles County Department of Public Works reported a 50% decrease in trash entering catchbasins since adoption of the current LA MS4 Permit. This means the Regional Board should have conducted the review and reconsideration step or should conduct this step no later than September 2010 (for the compliance point of 50%). If this is the case, it is prudent not to incorporate the LA River Trash TMDL into the LA MS4 Permit until after the reconsideration step has been completed. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.

If you require additional information or would like to discuss this matter, please feel free to contact either me or Kevin Powers, the City's Environmental Compliance Coordinator (310/257-2000), at your convenience.

Sincerely,

CITY OF HIDDEN HILLS



Cherie L. Paglia
City Manager

Attachment

cc: Roxanne Diaz, City Attorney
Candice K. Lee, Assistant City Attorney
Kevin Powers, Environmental Compliance Coordinator

Los Angeles



Stormwater Quality Partnership

Partner Cities:

Agoura Hills

Azusa

Beverly Hills

Calabasas

Hidden Hills

Monrovia

Norwalk

Rancho Palos Verdes

Westlake Village

November 5, 2009

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

Subject: Comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Dear Mr. Ridgeway:

Thank you for this opportunity to provide comments regarding incorporating the provisions of the Los Angeles River Trash Total Maximum Daily Load (TMDL) into the current Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Permit). As you may be aware, representatives and members of the Los Angeles Stormwater Quality Partnership (LASQP) attended the July 29, 2009 staff workshop and submitted written comments on the subject on July 28, 2009.

This group of nine Los Angeles County cities was formed with the intent of establishing a continuing and sustained working relationship between the municipal stormwater permittees and the California Water Quality Control Board for the Los Angeles Region (Regional Water Board). It is hope and goal to form a relationship focused on improving stormwater quality through a constructive and collaborative effort. In that spirit, and in our communications to the Regional Water Board on this matter, we have encouraged Regional Water Board staff to consider and incorporate two specific elements. These were to:

1) Explicitly recognize and include the TMDL review / reconsideration step at the sustained 50% reduction mark; and

2) Allow for options in demonstrating achievement with Waste Load Allocation (WLA), i.e., "compliance monitoring", including quantification of reductions from full capture, partial capture, institutional controls, and other equivalents.

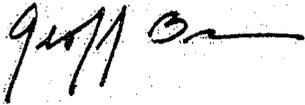
LASQP recognizes and appreciates that these have in fact been explicitly incorporated into the proposed Permit revisions. Regarding the first element, the review / reconsideration step is critical to both our and the Regional Water Board's ability to adaptively manage implementation of the TMDL. LASQP is willing to work with Regional Water Board staff to provide further clarification of the concept of a "sustained" reduction for purposes of review / reconsideration of the TMDL and its effectiveness.

LASQP comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Regarding the second element, providing options for demonstrating WLA achievement, such as through full capture, partial capture, and institutional controls, is also critical since many cities' trash-related characteristics differ (sources, amounts, locations, impacts, infrastructure, financing, etc.), however as the TMDL is implemented, cities will likely need to adapt their implementation actions and will need access to all options for demonstrating WLA achievement.

Thank you for the opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We look forward to continuing to work with you as these new permit provisions continue to be implemented. Feel free to contact me with questions.

Sincerely,
Los Angeles Stormwater Quality Partnership



Geoff Brosseau
Environmental Management / Technical Consultant

cc: LASQP Member Cities

City of Los Angeles

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1149 SOUTH BROADWAY, 10TH FLOOR
LOS ANGELES, CA 90015
TEL: (213) 485-0587
FAX: (213) 485-3839

November 9, 2009

Ms. Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality Control Board
320 W. Fourth Street, Suite 200
Los Angeles, CA 90013

Attention: Ivar Ridgeway

Dear Ms. Egoscue:

**COMMENTS: PROPOSED MODIFICATION TO THE COUNTY OF LOS ANGELES
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT**

The City of Los Angeles (City) continues to demonstrate its commitment to water quality improvement and environmental stewardship by pledging to become the "cleanest and greenest big City." The City developed a strategy for compliance with the Trash TMDL in 2004 and is now implementing it with great success, which has led to significant trash reductions in both the Los Angeles River (60%) and Ballona Creek (65%). This trash reduction surpasses the Trash TMDL current compliance milestone (50%) and positions the City to achieve full TMDL compliance much earlier than prescribed in the TMDL.

The City's compliance strategy is based on using a two-pronged approach utilizing both structural and institutional measures. The structural measures include the installation of trash control devices (full capture and partial capture) in the storm drain system throughout the City, targeting first the high trash generating areas, followed by the medium and low generating areas. The institutional measures include public outreach, street sweeping, catch basin cleaning, enforcement, etc., with a special focus on the high trash generating areas.

As part of the City's pioneering efforts to determine the most cost effective strategy for compliance, the City tested and implemented several in-line and off-line trash capture devices such as, hydrodynamic systems, netting systems, catch basin (CB) screens and catch basin inserts over the course of several years. The City concluded that implementing a combination of either CB inserts (full capture systems) and/or CB opening screen covers (partial capture) in catch

basins within the City areas is the most feasible, practical and cost effective strategy for compliance with the Trash TMDL in the City.

With respect to the City's compliance program described above, the City would like your consideration for the following comments/changes to the posted documents.

1. Within the *Findings* document, Finding No. 57 it states “. . . *In the latter case, compliance shall be determined based on direct measurement of trash discharges or site specific performance data.*” The City has piloted the performance of a variety of different products such as inserts, screen covers, netting systems, etc. over the course of several years. The City wants to ensure that “site specific performance” does not literally mean testing the performance of each device at every catch basin in the City, but that the intent is to demonstrate the performance of the device(s) within the specific jurisdiction or region. In addition, the City is concerned that the only proposed method for determining the effectiveness of institutional measures is through direct measurement of trash. As you know, the City has a huge storm drain system with approximately 50,000 catch basins dispersed over 450 square miles, so the task of direct measurement is neither practical nor feasible. The City's institutional measures, such as catch basin cleaning and street sweeping, are perpetual services to City residents that are closely scrutinized by our 4 million residents, and these services will likely increase overtime and not diminish. As such, the City is proposing that a finite pilot study (2-3 year duration) be conducted to determine the effectiveness of the institutional measures in a representative area of the City. The results of the study could be used for reporting the effectiveness of the institutional measures deployed by large municipalities such as the City of Los Angeles.

Therefore, our recommended change is as follows: “. . . *In the latter case, compliance shall be determined based on direct measurement of trash discharges or jurisdiction/region specific performance data. For a large municipality/jurisdiction with 10,000 or more catch basins, the performance of the institutional measures may be determined through a pilot study performed within a representative area of such municipality/jurisdiction. The results of the study may then be used to report the effectiveness of the institutional measures deployed.*”

2. *Please also apply the above change in Part 7.1.C (1) (b) (1).*
3. Within the *Findings* document, Finding No. 53 it states “. . . *Violations of the effluent limitations, therefore, are limited to the days of a storm event greater than 0.25 inches.*” The reference to a storm event greater than 0.25 inches to assess violations is inaccurate and appears to be in conflict with the Full Capture System's definition. As you know, the TMDL defines a full capture system as a device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour storm. Therefore, violations may be linked to the one-year, one-hour storm but not to a 0.25 inches storms or larger.

We recommend deleting the sentence and replacing it with one that references the definition of a full capture device in the TMDL.

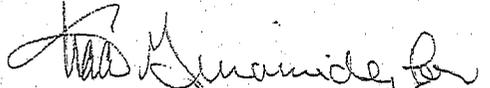
Ms. Tracy Egoscue
November 9, 2009
Page 3

It is important to note that the City has been reporting its annual trash reductions based on the number of installation of full capture and partial capture devices within the City, the performance of the devices, and the drainage areas serviced by the devices. The current reported reductions do not account for the benefits achieved by the ongoing institutional measures. The City intends on claiming credit for its institutional measures following completion of its installation of all structural devices in the City.

In closing, the City will invest approximately \$80 million to comply with the Trash TMDLs citywide. We have spent to-date approximately \$50 million towards retrofitting catch basins with structural devices to prevent trash from reaching the receiving waters and the City's strategy has been successful and used by other municipalities not only in the LA region but also in the San Francisco Bay area and Washington DC. The City's current investment involved the installation of in-line full capture systems (6 hydrodynamic devices and 14 netting systems), and off-line systems full and partial capture systems (8,000 catch basin inserts and 24,000 screen covers).

If you have any questions or wish to discuss the City's comments, please contact Shahram Kharaghani, Stormwater Program Manager, at (213) 485-0587, or Donna Toy Chen at (213) 485-3928.

Sincerely,


ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

SK:MS:AM:am
WPDCR 8685

c: David Freeman, Mayor's Office
Cynthia Ruiz, BPW, President
Traci Minamide, BOS Assistant Director
Adel Hagekhalil, BOS Assistant Director
Shahram Kharaghani, BOS/WPD
Morad Sedrak, BOS/WPD
Donna Chen, BOS/WPD

City of Monrovia



November 9, 2009

Mr. Ivar Ridgeway
iridgeway@waterboards.ca.gov
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA ELECTRONIC MAIL AND U.S. Mail

SUBJECT: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of Monrovia ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit. A copy of that letter is attached for your convenience. The City does, however, have the following two additional concerns regarding the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the LA MS4 Permit:

1) **The Clean Water Act's Prohibition on Antibacksliding**

The City appreciates the fact that the proposed permit revisions include a proposed review and reconsideration of the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocations has been achieved. The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than the those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. As you know, 33 USC §1342 (o) and 40 C.F.R. §122.44(1)(1) (which contain the antibacksliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

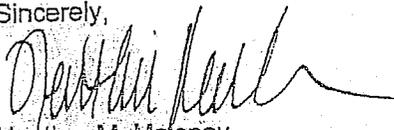
If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. The City would greatly appreciate a response from the Regional Board on this specific issue.

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It is not clear when the review/reconsideration step of the final Waste Load Allocations will take place. Table 6 (Implementation Schedule) of the LA River Trash TMDL provides that a 50% reduction of the Baseline Waste Allocations must be achieved by September 2009 and the compliance point of 50% of the Baseline Waste Load Allocations must be reached by September 2010. Furthermore, Page 19 of the Fact Sheet indicates that the Los Angeles County Department of Public Works reported a 50% decrease in trash entering catchbasins since adoption of the current LA MS4 Permit. This means the Regional Board should have conducted the review and reconsideration step or should conduct this step no later than September 2010 (for the compliance point of 50%). If this is the case, it is prudent not to incorporate the LA River Trash TMDL into the LA MS4 Permit until after the reconsideration step has been completed. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.

If you require additional information or would like to discuss this matter, please feel free to contact me at your convenience.

Sincerely,



Heather M. Maloney
Senior Environmental Analyst

Enc. LASQP Comment Letter

cc: Scott Ochoa, City Manager
Craig Steele, City Attorney
Candice K. Lee, Assistant City Attorney

City of San Fernando



CITY OF
San Fernando
Historic & Visionary

November 6, 2009

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
iridgeway@waterboards.ca.gov
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of San Fernando ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

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PUBLIC WORKS DEPARTMENT
117 MACNEIL STREET SAN FERNANDO, CALIFORNIA 91340-2993
PHONE 818.898.1222 • FAX 818.365.8090

antibacksliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

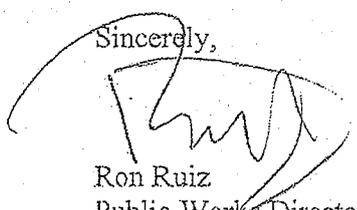
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If you require additional information or would like to discuss this matter, please feel free to contact me at your convenience.

Sincerely,



Ron Ruiz
Public Works Director
City of San Fernando

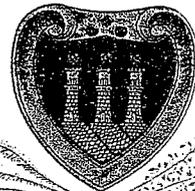
(Encl.)

cc: Robert Ordelleide, Interim City Administrator
Michael Estrada, City Attorney
Candice K. Lee, Assistant City Attorney

City of San Marino

City of San Marino

Office of the City Manager



November 5, 2009

MATTHEW C. BALLANTYNE
City Manager

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
iridgeway@waterboards.ca.gov
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of San Marino ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

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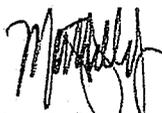
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Your consideration of our comments is greatly appreciated.

Sincerely,



Matt Ballantyne
City Manager
City of San Marino

cc: Steve Dorsey, City Attorney
Candice K. Lee, Assistant City Attorney

Los Angeles



Stormwater Quality Partnership

Partner Cities:

Agoura Hills
Azusa
Beverly Hills
Calabasas
Hidden Hills
Monrovia
Norwalk
Rancho Palos Verdes
Westlake Village

November 5, 2009

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

Subject: Comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Dear Mr. Ridgeway:

Thank you for this opportunity to provide comments regarding incorporating the provisions of the Los Angeles River Trash Total Maximum Daily Load (TMDL) into the current Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Permit). As you may be aware, representatives and members of the Los Angeles Stormwater Quality Partnership (LASQP) attended the July 29, 2009 staff workshop and submitted written comments on the subject on July 28, 2009.

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- 1) *Explicitly recognize and include the TMDL review / reconsideration step at the sustained 50% reduction mark; and*
- 2) *Allow for options in demonstrating achievement with Waste Load Allocation (WLA), i.e., "compliance monitoring", including quantification of reductions from full capture, partial capture, institutional controls, and other equivalents.*

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LASQP comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

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Thank you for the opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We look forward to continuing to work with you as these new permit provisions continue to be implemented. Feel free to contact me with questions.

Sincerely,
Los Angeles Stormwater Quality Partnership



Geoff Brosseau
Environmental Management / Technical Consultant

cc: LASQP Member Cities

City of South El Monte



CITY OF SOUTH EL MONTE

1415 N. SANTA ANITA AVENUE
SOUTH EL MONTE, CALIFORNIA 91733
(626) 579-6540 • FAX (626) 579-2107



November 9, 2009

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of South El Monte ("City") is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

The City incorporates by reference comments prepared by Richard Montevideo on behalf of the Coalition for Practical Regulations entitled: *Comments on Proposed Modifications to the County of Los Angeles Municipal Separate Storm Sewer System Permit Regarding the Los Angeles River Trash Total Maximum Daily Loads, 5*, bearing the date of November 2009.

The City, in addition, has the following two concerns regarding the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the LA MS4 Permit:

1) The Clean Water Act's Prohibition on Antibacksliding

The City appreciates the fact that the proposed permit revisions include a proposed review and

Mr. Ivar Ridgeway
November 9, 2009
Page 2 of 2

reconsideration of the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocations has been achieved. The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. As you know, 33 USC §1342 (o) and 40 C.F.R. §122.44(1)(1) (which contain the antibacksliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

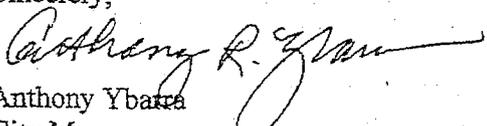
If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. The City would greatly appreciate a response from the Regional Board on this specific issue.

2) The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear

It is not clear when the review/reconsideration step of the final Waste Load Allocations will take place. Table 6 (Implementation Schedule) of the LA River Trash TMDL provides that a 50% reduction of the Baseline Waste Allocations must be achieved by September 2009 and the compliance point of 50% of the Baseline Waste Load Allocations must be reached by September 2010. Furthermore, Page 19 of the Fact Sheet indicates that the Los Angeles County Department of Public Works reported a 50% decrease in trash entering catchbasins since adoption of the current LA MS4 Permit. This means the Regional Board should have conducted the review and reconsideration step or should conduct this step no later than September 2010 (for the compliance point of 50%). If this is the case, it is prudent not to incorporate the LA River Trash TMDL into the LA MS4 Permit until after the reconsideration step has been completed. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.

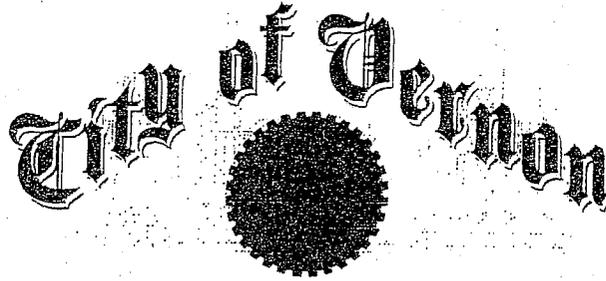
If you require additional information or would like to discuss this matter, please feel free to contact me at your convenience.

Sincerely,


Anthony Ybarra
City Manager
City of South El Monte

cc: Quinn Barrow, City Attorney
Candice K. Lee, Assistant City Attorney

City of Vernon



COMMUNITY SERVICES & WATER DEPARTMENT

Samuel Kevin Wilson, Director of Community Services & Water
4305 Santa Fe Avenue, Vernon, California 90058
Telephone (323) 583-8811 Fax (323) 826-1435

November 5, 2009

VIA ELECTRONIC MAIL AND U.S. Mail

Mr. Ivar Ridgeway
iridgeway@waterboards.ca.gov
Municipal Permits Section
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate Provisions of the Los Angeles River Trash TMDL (NPDES Permit No. CAS004001; Public Notice No. 09-117)

Dear Mr. Ridgeway:

Thank you for the opportunity to provide comments on the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 Permit. The City of Vernon (City) is a co-Permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order Nos. R4-2006-0074 and R4-2007-0042) (LA MS4 Permit) and is a City located in the Los Angeles River Watershed. The City understands that the Board proposes to reopen the permit to incorporate the provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("LA River Trash TMDL") into the LA MS4 Permit.

The City has the following two concerns regarding the proposed incorporation of provisions of the Los Angeles River Trash TMDL into the LA MS4 Permit:

1) **The Clean Water Act's Prohibition on Anti-backsliding**

The City appreciates the fact that the proposed permit revisions include a proposed review and reconsideration of the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocations has been achieved. The City is, however, concerned that the Clean Water Act's prohibition on anti-backsliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit

Exclusively Industrial
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if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. As you know, 33 USC §1342 (o) and 40 C.F.R. §122.44(1)(1) (which contain the anti-backsliding provisions) state that a permit may not be modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. The City would greatly appreciate a response from the Regional Board on this specific issue.

2) The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear

It is not clear when the review/reconsideration step of the final Waste Load Allocations will take place. Table 6 (Implementation Schedule) of the LA River Trash TMDL provides that a 50% reduction of the Baseline Waste Allocations must be achieved by September 2009 and the compliance point of 50% of the Baseline Waste Load Allocations must be reached by September 2010. Furthermore, Page 19 of the Fact Sheet indicates that the Los Angeles County Department of Public Works reported a 50% decrease in trash entering catch basins since adoption of the current LA MS4 Permit. This means the Regional Board should have conducted the review and reconsideration step or should conduct this step no later than September 2010 (for the compliance point of 50%). If this is the case, it is prudent not to incorporate the LA River Trash TMDL into the LA MS4 Permit until after the reconsideration step has been completed. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.

If you require additional information or would like to discuss this matter, please feel free to contact me at your convenience.

Sincerely,



Samuel Kevin Wilson, P.E.
Director of Community Services & Water

SKW/sn

cc: Donal O'Callaghan, City Administrator
Lawrence Weiner, City Attorney
Candice K. Lee, Assistant City Attorney

County of Los
Angeles, DPW #1



GAIL FARBER, Director

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 9, 2009

IN REPLY PLEASE

REFER TO FILE:

WM-9

Ms. Tracy Egoscue, Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr. Ivar Ridgeway

Dear Ms. Egoscue:

**COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT TO
INCORPORATE PROVISIONS RELATING TO THE LOS ANGELES RIVER
WATERSHED TRASH TOTAL MAXIMUM DAILY LOAD**

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm Sewer System Permit to incorporate the Los Angeles River Trash Total Maximum Daily Load. Our comments and request to submit evidence are enclosed.

If you have any questions, please contact me or your staff may contact Mr. Hector Bordas at (626) 458-5947 or hbordas@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

FW:ad

P:\wmpub\Secretarial\2009 Documents\Letters\After_2_20_09\Proposed LAR Trash TMDL Prov-LACFCD.doc\CO9570

Enc.

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COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT TO
INCORPORATE WASTE LOAD ALLOCATIONS FOR TRASH PURSUANT TO
THE LOS ANGELES RIVER WATERSHED TRASH TMDL; REQUEST TO
SUBMIT EVIDENCE

I. COMMENTS ON THE PROPOSED MODIFICATION TO THE LOS
ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm System Permit (Permit) to incorporate the Los Angeles River Trash Total Maximum Daily Load (Trash TMDL). The Los Angeles County Flood Control District (District) has been and continues to be fully supportive of the Trash TMDL's goals. Prior to the adoption of the Trash TMDL, the District had already been implementing proactive measures to reduce trash.

The District submits the following three comments on the proposed Permit amendment in order to improve its implementation and make it consistent with legal requirements:

(1) A provision should be added to Part 7, Appendix 7-1, of the proposed Permit amendment to make Appendix 7-1 consistent with Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into in 2003 between the Los Angeles Regional Board, the State Water Resources Control Board, the City of Los Angeles, the County of Los Angeles (County), the District, the Santa Monica Baykeeper, and Heal The Bay.

(2) Part 7.1.B(4) of the proposed Permit amendment should be deleted because it is unnecessary and to make clear that the District is not responsible for the conduct of permittees over which it has no control; and

(3) Part 7.1.A and Appendix 7-1 of the proposed Permit amendment should be modified to be made consistent with the recommendations of the State Board's panel of experts on the use of numeric effluent limits in municipal stormwater permit and EPA's guidance on the inclusion of TMDLs into stormwater water permits.

A. Proposed Appendix 7-1 Should be Modified to Reflect
Table 7.2.3 of the Basin Plan and the Settlement
Agreement entered into Between the Regional Board,
State Board, and Various Parties

On January 25, 2001, the Regional Board adopted the original Trash TMDL for the Los Angeles River watershed. This TMDL, as approved by the

State Board, was challenged by the City of Los Angeles ("City"), the County and the District. On September 18, 2003, the Regional Board, State Board, City, County, District, Santa Monica Baykeeper, and Heal the Bay entered into a Settlement Agreement resolving these challenges. A copy of the Settlement Agreement is included with this letter; the District requests that this agreement be admitted into evidence and made a part of the Administrative Record.

The Settlement Agreement requires the Regional Board to review and reconsider the final trash waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. (Attachment A, page 23.) The Regional Board subsequently incorporated this provision of the Settlement Agreement into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3.

The Regional Board has acknowledged this obligation in its proposed new Finding 50, but the requirement itself has not been included in proposed Part 7 of the Permit. Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that is in the Basin Plan. This footnote says "[T]he Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed."

For the convenience of the Regional Board, a copy of proposed Appendix 7-1 with this footnote added is included with these comments.

B. Because the District Cannot Lawfully be Made Liable for Actions of Other Permittees Over Which it Has No Control, Proposed Part 7.1.B(4) Should be Deleted

Proposed Parts 7.1.A and B of the Permit address each permittee's compliance with the trash waste load allocations allocated to it. Part 7.B(1) provides that permittees may comply with the allocations using any lawful means. Parts 7.B(2), (3) and (4) address the consequences of a permittee's failure to comply with its waste load allocations.

Part 7.1.B(4) appears to impose liability on the District for another permittee's compliance with the Permit where a permittee's stormwater flows into portions of the MS4 that are "under the authority of" the District. Apparently, the Regional Board is under the impression that certain permittees could be prevented from complying with their obligations under the Trash TMDL because of the District's ownership of portions of the MS4.

There is no factual basis for this erroneous conclusion, for two reasons. First, each permittee has its own, separate obligation to comply with the Trash TMDL and there is no instance in which a permittee could not comply with its waste load allocations by utilizing its own facilities and authority exclusively. In

other words, there are no circumstances under which a permittee would be required to install devices or institutional controls within the District's property in order to comply with the Trash TMDL.

Secondly, if a permittee chooses to install devices in the District's portion of the MS4, there is a procedure for obtaining a permit from the District to modify the District's facilities.

Therefore, there is no factual basis for concluding that the District has control over any other permittee's ability to comply with the Trash TMDL. Consequently, there is no need for proposed Paragraph 7.1.B(4) and no justification for holding the District jointly liable with a permittee simply because the District has authority over portions of the MS4.

Further, there is no legal basis for joint and several liability under either the California Water Code or the Clean Water Act. Because the District could not prevent another permittee from complying with the Permit, the Regional Board cannot as a matter of law hold the District jointly and severally liable with a permittee for permit violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." 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 . . ." 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. 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.2nd 1344, 1348 (N.D. Ga. 2004); *United States v. Sargent County Water Dist.*, 876 F.Supp. 1081, 1088 (D.N.D. 1992). Thus, there is no provision for joint and several liability under either the California Water Code or the Clean Water Act.

Proposed Part 7.1.B(4) therefore should be deleted as unnecessary and contrary to law. It is unlawful and an abuse of discretion to imply that the District would be jointly liable with another permittee, especially where the District has no control over the permittee's actions. Accordingly, the District requests that Part 7.1.B(4) be deleted.

C. The Trash TMDL Waste Load Allocations Should Be Incorporated into the Permit as Municipal Action Levels, Not Effluent Limitations

Proposed Appendix 7-1 calculates the trash waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action

Levels Per Storm Year", and references in proposed Part 7 to effluent limitations should be similarly revised.

If this change is not made, the proposed Permit amendment will be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA's guidance on incorporating TMDL waste load allocations into storm sewer permits.

The State Board convened a panel of experts for the very purpose of addressing the feasibility of including numeric effluent limits in stormwater permits. In June, 2006, that panel issued its report, entitled "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities." In that report, the State Board's panel of experts concluded that, "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." The panel of experts instead suggested a different course, with "action levels" used to identify discharges that need additional attention. Report, p. 8.

The experts' conclusions and recommendations are applicable here. There is nothing unique about the storms in Southern California or the presence of trash in stormwater runoff that makes trash significantly different than any other pollutant that is the subject of the expert panel's report. As recognized by the experts, storms can be variable and the ability to collect the trash could vary with those conditions. Because of the variability associated with storms and the difficulty in engineering solutions, the panel recommended the use of municipal action levels.

Use of municipal action levels can be as effective in assuring compliance with the waste load allocations as numeric effluent limits. If a permittee does not comply with the waste load allocations, the Regional Board can seek enforcement of the Permit's provisions at that time. The variability of storm conditions and the permittees' lack of control of these conditions, however, still suggest that incorporation of these waste load allocations as numeric effluent limits would be an abuse of discretion.

The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits. On November 22, 2002, EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs." In that memorandum, EPA expressly rejected placing numeric limits based on TMDLs in storm water permits, except in rare circumstances. EPA recognized that numeric limits are neither feasible nor appropriate given the variability of storm water runoff and the current lack of knowledge as to sources of pollutants and effective treatment for those pollutants. EPA said:

[I]n light of 33 U.S.C. § 1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. . . .

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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.

EPA November 22, 2002, Memorandum at p. 4.

EPA further reaffirmed the appropriateness of an iterative, adaptive BMP management approach. EPA said:

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (*i.e.*, more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," *i.e.*, "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report at ES-5.*

EPA November 22, 2002, Memorandum at p. 5.

For the convenience of the Regional Board, a copy of the State Board panel's report and the EPA Guidance and proposed Part 7 and Appendix 7-1 with the revisions suggested above are included with this letter.

D. Conclusion

For the reasons set forth above, a footnote should be added to Tables 1a and 1b of Appendix 7-1, making these tables consistent with the Basin Plan and the settlement agreement. Proposed Part 7.1.B(4) should be deleted. Finally, proposed Part 7.1 and Appendix 7-1 should be modified to reflect that the waste

load allocations are included within the Permit as municipal action levels, not effluent limits, consistent with the recommendation of the State Board's panel of experts and EPA's guidance on the inclusion of TMDLs into stormwater permits.

II. REQUEST TO SUBMIT EVIDENCE

The District requests that the following documents be admitted into evidence and made a part of the administrative record:

1. Settlement Agreement Regarding Total Maximum Daily Loads For Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed.
2. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm Water Panel Recommendations to the California State Water Resources Control Board, June 19, 2006).
3. EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."

Copies of these documents are submitted with this request.

Appendix 7-1

Waste Load Allocation
Interim and Final ~~Effluent~~ Limitations for Trash for Permittees Identified as Responsible
Jurisdictions in the Los Angeles River Watershed Trash TMDL

Waste Load Allocation
 Table 1a: Los Angeles River Watershed ~~Trash~~ Effluent Limitations¹ per Storm Year²
 (gallons of uncompressed trash)³

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ⁴ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|---------------------------|
| Alhambra | 19952 | 15961 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 25054 | 20043 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 8013 | 6410 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 6750 | 5400 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 2139 | 1711 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 46295 | 37036 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 11253 | 9002 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 3416 | 2733 | 2050 | 1366 | 663 | 225 | 0 |
| Commerce | 29367 | 23493 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 26596 | 21276 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 2968 | 2374 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 19532 | 15625 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 6105 | 4884 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 21104 | 16883 | 12662 | 8442 | 4221 | 1393 | 0 |
| Glendale | 70157 | 56126 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 1832 | 1465 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 9580 | 7664 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 6176 | 4941 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 16748 | 13398 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 687423 | 549938 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 155112 | 124089 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 14101 | 11280 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 3065 | 2452 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 23344 | 18675 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 25185 | 20148 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 19450 | 15560 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 13726 | 10981 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 55999 | 44799 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 6977 | 5581 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 13653 | 10922 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 6974 | 5579 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 10172 | 8137 | 6103 | 4069 | 2034 | 671 | 0 |
| San Marino | 7196 | 5756 | 4317 | 2878 | 1439 | 475 | 0 |
| Santa Clarita | 451 | 360 | 270 | 180 | 90 | 30 | 0 |
| Sierra Madre | 5806 | 4644 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 4717 | 3774 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 69 | 55 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 8000 | 6400 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 21952 | 17562 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 7454 | 5963 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 8786 | 7029 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 23602 | 18881 | 14161 | 9441 | 4720 | 1558 | 0 |

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm year is defined as October 1 to September 30 herein.

⁴ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

² The Regional Board will review and monitor these final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed.

Waste Load Allocation

Table 1a: Los Angeles River Watershed Trash-Effluent Limitations¹ per Storm Year²
(gallons of uncompressed trash)³

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ⁴ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|---------------------------|
| Alliandra | 19952 | 15961 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 25054 | 20043 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 8013 | 6410 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 6750 | 5400 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 2139 | 1711 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 46295 | 37036 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 11253 | 9002 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 3416 | 2733 | 2050 | 1366 | 683 | 225 | 0 |
| Commerce | 29367 | 23493 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 26596 | 21276 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 2968 | 2374 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 19532 | 15625 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 6105 | 4884 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 21104 | 16883 | 12562 | 8442 | 4221 | 1393 | 0 |
| Glendale | 70157 | 56126 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 1832 | 1465 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 9580 | 7664 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 6176 | 4941 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 16748 | 13398 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 687423 | 549938 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 155112 | 124089 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 14101 | 11280 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 3065 | 2452 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 23344 | 18675 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 25185 | 20148 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 19450 | 15560 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 13726 | 10981 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 55999 | 44799 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 6977 | 5581 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 13653 | 10922 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 6974 | 5579 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 10172 | 8137 | 6103 | 4069 | 2034 | 671 | 0 |
| San Marino | 7196 | 5756 | 4317 | 2878 | 1439 | 475 | 0 |
| Santa Clarita | 451 | 360 | 270 | 180 | 90 | 30 | 0 |
| Sierra Madre | 5806 | 4644 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 4717 | 3774 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 69 | 55 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 8000 | 6400 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 21952 | 17562 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 7454 | 5963 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 8786 | 7029 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 23602 | 18881 | 14161 | 9441 | 4720 | 1558 | 0 |

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm-year is defined as October 1 to September 30 herein.

³ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

3/ The Regional Board will review and reconsider the final watershed allocations once a reduction of 50% has been achieved and maintained in the watershed

for inspection by the Regional Board, and that they are in compliance with any conditions of their certification, shall be presumed to have discharged trash in an amount that corresponds to the percentage of the baseline waste load allocation represented by the drainage in question. A permittee may overcome this presumption by demonstrating (using any of the methods authorized in this Part 7.1.) the actual or calculated discharge for that drainage.

- (3) Any Permittee that fails to demonstrate that it is in compliance with the interim and final effluent limitations as specified in this Part 7.1 shall be presumed to have violated the applicable interim and/or final effluent limitations.
- (4) ~~Any Permittee that establishes that it lacks authority over the MS4 physical infrastructure because it is under the authority of the Los Angeles County Flood Control District shall be held jointly and severally liable with the Los Angeles County Flood Control District for violations of the interim or final effluent limitations assigned to that jurisdiction unless the Permittee and the Flood Control District submit a duly executed agreement (the terms of which has been approved by the Executive Officer to ensure it is consistent with the requirements of this Order) that allocates between them all responsibility for compliance with these provisions, and further provided that the Permittee is in compliance with its respective obligations under the agreement.~~

C. Monitoring and Reporting Requirements (pursuant to Water Code section 13383)

- (1) Within 60 days of adoption of Part 7, Section 1 (Los Angeles River Trash TMDL) and on October 31, 2010 and every year thereafter, each Permittee identified in Appendix 7-1 shall submit a TMDL Compliance Report detailing compliance with the interim and final effluent limitations. Reporting shall include the information specified below. The report shall be submitted on a reporting form to be specified by the Executive Officer. The report shall be signed under penalty of perjury by the Director of Public Works or other agency head (or their delegee) that is responsible for ensuring compliance with this permit. Permittees shall be charged with and shall demonstrate compliance with the relevant effluent limitations beginning with their October 31, 2010 TMDL Compliance Report.

(a) Reporting Compliance based on Full Capture Systems:

Permittees identified in Appendix 7-1 shall provide information on the number and location of full capture installations, the sizing of each full capture installation, the drainage areas addressed by these installations, and compliance with the applicable interim or final effluent

The Trash TMDL. Appendix 7-1 sets forth municipal action levels for measuring compliance with these effluent limitations.

Addition of New Part 7:

PART 7 - TOTAL MAXIMUM DAILY LOAD PROVISIONS

The provisions of this Part implement and are consistent with the assumptions and requirements of Waste Load Allocations from TMDLs for which some or all of the Permittees in this Order are responsible.

1. TMDL for Trash in the Los Angeles River Watershed

A. Waste Load Allocations: Each Permittee identified in Appendix 7-1 shall comply with the interim and final effluent limitations set forth in Appendix 7-1 hereto.²

B. Compliance:

(1) Permittees may comply with the effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, or *institutional controls*, as described below, and any combination of these may be employed to achieve compliance:

(a) Full Capture Systems:

- 1) The Basin Plan authorizes the Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System." (See Appendix 7-2.)³
- 2) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of paragraph 3), immediately below, and any conditions in the certification, continue to be met.
- 3) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdiction until all areas draining to the Los Angeles River system are addressed. For purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where

² The interim and final effluent limitations set forth in Appendix 7-1 are equivalent to the Compliance Points identified in Table 7-2.3 of the Basin Plan.

³ The Regional Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts; and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device.

County of Los
Angeles, DPW #2



GAIL FARBER, Director

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 9, 2009

IN REPLY PLEASE
REFER TO FILE: WM-9

Ms. Tracy Egoscue, Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr Ivar Ridgeway

Dear Ms. Egoscue:

**COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED
MODIFICATION TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM
SEWER SYSTEM PERMIT TO INCORPORATE PROVISIONS RELATING TO THE
LOS ANGELES RIVER WATERSHED TRASH TOTAL MAXIMUM DAILY LOAD**

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm Sewer System Permit to incorporate the Los Angeles River Trash Total Maximum Daily Load. Our comments and request to submit evidence are enclosed.

If you have any questions, please contact me or your staff may contact Mr Hector Bordas at (626) 458-5947 or hbordas@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

FW:ad

P:\wmpub\Secretarial\2009 Documents\Letters\After 3_20_09\Proposed LAR Trash TMDL Prov-County.docx\09569

Enc

cc: Chief Executive Office (Lari Sheehan)

COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT TO INCORPORATE WASTE LOAD ALLOCATIONS FOR TRASH PURSUANT TO THE LOS ANGELES RIVER WATERSHED TRASH TMDL; REQUEST TO SUBMIT EVIDENCE

I. COMMENTS ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm System Permit (Permit) to incorporate the Los Angeles River Trash Total Maximum Daily Load (Trash TMDL). The County of Los Angeles (County) has been and continues to be fully supportive of the Trash TMDL's goals. Prior to the adoption of the Trash TMDL, the County had already been implementing proactive measures to reduce trash. The County has also voluntarily been retrofitting its infrastructure with full and partial capture systems to prevent and reduce the entry of trash into flood control channels.

The County submits the following three comments on the proposed permit amendment in order to improve its implementation and make it consistent with legal requirements:

(1) The phrase "performance data" in Part 7.1.B(1)(a)(3) of the proposed Permit amendment should be deleted because it is superfluous and ambiguous;

(2) A provision should be added to Part 7, Appendix 7-1, of the proposed amendment to the Permit to make Appendix 7-1 consistent with Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into in 2003 between the Los Angeles Regional Board, the State Water Resources Control Board, the City of Los Angeles, the County, the Los Angeles County Flood Control District, the Santa Monica Baykeeper, and Heal The Bay; and

(3) Part 7.1.A and Appendix 7-1 of the proposed amendment to the Permit should be modified to be made consistent with the recommendations of the State Board's panel of experts on the use of numeric effluent limits in municipal stormwater permit and EPA's guidance on the inclusion of TMDLs into stormwater water permits.

A. "Performance data" as it is used in Part 7.1.B(1)(a)(3) is vague and superfluous and therefore should be deleted

Proposed Part 7.1.B(1)(a)(3) addresses compliance with the Trash TMDL through installation of full capture devices. This proposed paragraph provides, "For purposes of this Permit, attainment of the effluent limitations shall be

conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where certified full capture systems treat all drainage from the area, provided that the full capture systems are adequately sized, maintained and maintenance records and performance data are maintained and available for inspection by the Regional Board."

The reference to "performance data" in this paragraph is superfluous and ambiguous. The reference is superfluous because review of the full capture device's performance has already been performed in conjunction with its certification. If the term is meant to refer to something else, then it is ambiguous, because it is unclear what additional data is being requested. Part 7.1.B(1)(a)(3) already requires maintenance records be kept and made available.

The term "performance data" in proposed Part 7.1.B(1)(a)(3) is superfluous and ambiguous. For this reason, the County requests that the phrase be deleted. For the convenience of the Regional Board, a copy of proposed Part 7.1. with this revision is included with these comments.

B. Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties

On January 25, 2001, the Regional Board adopted the original Trash TMDL for the Los Angeles River watershed. This TMDL, as approved by the State Board, was challenged by the City of Los Angeles ("City"), the County and the Los Angeles Flood Control District. On September 18, 2003, the Regional Board, State Board, City, County, District, Santa Monica Baykeeper, and Heal the Bay entered into a Settlement Agreement resolving these challenges. A copy of the Settlement Agreement is included with this letter; the County requests that this agreement be admitted into evidence and made a part of the Administrative Record.

The Settlement Agreement requires the Regional Board to review and reconsider the final waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. (Attachment A, page 23.) The Regional Board subsequently incorporated this provision of the Settlement Agreement into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3.

The Regional Board has acknowledged this obligation in its proposed new Finding 50, but the requirement itself has not been included in proposed Part 7. Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that is in the Basin Plan. This footnote says "[T]he Regional

Board will review and reconsider the final Waste Load allocations once a reduction of 50% has been achieved and sustained in the watershed."

For the convenience of the Regional Board, a copy of proposed Appendix 7-1 with this footnote included is included with these comments.

C. The Trash TMDL Waste Load Allocations Should Be Incorporated into the Permit as Municipal Action Levels, Not Effluent Limitations

Proposed Appendix 7-1 calculates the waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action Levels Per Storm Year", and references in proposed Part 7 to effluent limitations should be similarly revised.

If this change is not made, the proposed amendment to the Permit would be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA guidance on incorporating TMDL waste load allocations into storm sewer permits.

The State Board convened a panel of experts for the very purpose of addressing the feasibility of including numeric effluent limits in stormwater permits. In June, 2006, that panel issued its report, entitled "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities." In that report, the State Board's panel of experts concluded that, "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." The panel of experts instead suggested a middle course, with "action levels" used to identify discharges that need additional attention. Report, p. 8.

The experts' conclusions and recommendations are applicable here. There is nothing unique about the storms in Southern California or the presence of trash in stormwater runoff that makes trash significantly different than any other pollutant that is the subject of the expert panel's report. As recognized by the experts, storms can be variable and the ability to collect the trash could vary with those conditions. Because of the variability associated with storms and the difficulty in engineering solutions, the panel recommended a middle course of municipal action levels.

Use of municipal action levels can be as effective in assuring compliance with the waste load allocations as numeric effluent limits. If a permittee does not comply with the waste load allocations, the Regional Board can seek enforcement of the Permit's provisions at that time. The variability of storm conditions and the permittees' lack of control of these conditions, however, still

suggest that incorporation of these waste load allocations as numeric effluent limits would be an abuse of discretion.

The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits. On November 22, 2002, EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs." In that memorandum, EPA expressly rejected placing numeric limits based on TMDLs in storm water permits, except in rare circumstances. EPA recognized that numeric limits are neither feasible nor appropriate given the variability of storm water runoff and the current lack of knowledge as to sources of pollutants and effective treatment for those pollutants. EPA said:

[I]n light of 33 U.S.C. § 1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. . . .

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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.

EPA November 22, 2002, Memorandum at p. 4.

EPA further reaffirmed the appropriateness of an iterative, adaptive BMP management approach. EPA said:

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (*i.e.*, more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," *i.e.*, "a cyclical process in which TMDL plans are periodically assessed for their achievement of water

quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

EPA November 22, 2002, Memorandum at p. 5.

For the convenience of the Regional Board, a copy of proposed Part 7 and Appendix 7-1 with the revisions suggested above is included with this letter.

D. Conclusion

For the reasons set forth above, the phrase "performance data" should be deleted from proposed paragraph 7.1.B(1)(a)(3). A footnote should be added to Tables 1a and 1b of Appendix 7-1, making these tables consistent with the Basin Plan and the settlement agreement. Finally, proposed Part 7.1.A should be modified to reflect that the waste load allocations are included within the permit as municipal action levels, not effluent limits, consistent with the recommendation of the State Board's panel of experts and EPA's guidance on the inclusion of TMDLs into stormwater permits.

II. REQUEST TO SUBMIT EVIDENCE

The County requests that the following documents be admitted into evidence and made a part of the administrative record:

1. Settlement Agreement Regarding Total Maximum Daily Loads For Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed.
2. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm Water Panel Recommendations to the California State Water Resources Control Board, June 19, 2006).
3. EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."

Copies of these documents are submitted with this request.

certified *full capture systems* treat all drainage from the area, provided that the *full capture systems* are adequately sized, maintained and maintenance records and performance data are maintained and available for inspection by the Regional Board.

- i. A Permittee relying entirely on *full capture systems* shall be deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction are serviced by appropriate certified *full capture systems* as described in paragraph (a)(3).
- ii. A Permittee relying entirely on *full capture systems* shall be deemed in compliance with its interim effluent limitations:
 1. By demonstrating that *full capture systems* treat the percentage of drainage areas in the watershed that corresponds to the required trash abatement.
 2. Alternatively, a Permittee may propose a schedule for jurisdiction-wide installation of *full capture systems*, targeting first the areas of greatest trash generation (based upon the information on drainage area and litter generation rates by land use provided in Appendices I and III of the Los Angeles River Trash TMDL Staff Report) for the Executive Officer's approval. The Executive Officer shall not approve any such schedule that does not result in timely compliance with the final effluent limitations. A Permittee shall be deemed in compliance with its interim effluent limitations provided it is fully in compliance with any such approved schedule.

(b) Partial Capture Devices and Institutional Controls:
Permittees may comply with their interim and final effluent limitations through the installation of *partial capture devices* and the application of *institutional controls*.

Appendix 7-1

Waste Load Allocation
Interim and Final ~~Effluent~~ Limitations for Trash for Permittees Identified as Responsible
Jurisdictions in the Los Angeles River Watershed Trash TMDL

Waste Load Allocations

Table Ia: Los Angeles River Watershed **Trash Effluent Limitations¹** per Storm Year²
(gallons of uncompressed trash)³

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ³ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|---------------------------|
| Alhambra | 19952 | 15961 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 25054 | 20043 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 8013 | 6410 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 6750 | 5400 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 2139 | 1711 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 46295 | 37036 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 11253 | 9002 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 3416 | 2733 | 2050 | 1366 | 683 | 225 | 0 |
| Commerce | 29367 | 23493 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 26596 | 21276 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 2968 | 2374 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 19532 | 15625 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 6105 | 4884 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 21104 | 16883 | 12662 | 8442 | 4221 | 1393 | 0 |
| Glendale | 70157 | 56126 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 1832 | 1465 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 9580 | 7664 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 6176 | 4941 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 16748 | 13398 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 687423 | 549938 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 155112 | 124089 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 14101 | 11280 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 3065 | 2452 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 23344 | 18675 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 25185 | 20148 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 19450 | 15560 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 13726 | 10981 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 55999 | 44799 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 6977 | 5581 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 13653 | 10922 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 6974 | 5579 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 10172 | 8137 | 6103 | 4069 | 2034 | 671 | 0 |
| San Marino | 7196 | 5756 | 4317 | 2878 | 1439 | 475 | 0 |
| Santa Clarita | 451 | 360 | 270 | 180 | 90 | 30 | 0 |
| Sierra Madre | 5806 | 4644 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 4717 | 3774 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 69 | 55 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 8000 | 6400 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 21952 | 17562 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 7454 | 5963 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 8786 | 7029 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 23602 | 18881 | 14161 | 9441 | 4720 | 1558 | 0 |

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm year is defined as October 1 to September 30 herein.

³ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

³ The Regional Board will review and reconsider these final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed.

Waste Load Allocation

Table 1a: Los Angeles River Watershed Trash Effluent Limitations¹ per Storm Year²
(gallons of uncompressed trash)³

| Permittees | 2010 (50%) | 2011 (40%) | 2012 (30%) | 2013 (20%) | 2014 (10%) | 2015 (3.3%) | 2016 ⁴ (0%) |
|----------------------|---------------|---------------|---------------|---------------|---------------|----------------|---------------------------|
| Alhambra | 19952 | 15961 | 11971 | 7981 | 3990 | 1317 | 0 |
| Arcadia | 25054 | 20043 | 15032 | 10022 | 5011 | 1654 | 0 |
| Bell | 8013 | 6410 | 4808 | 3205 | 1603 | 529 | 0 |
| Bell Gardens | 6750 | 5400 | 4050 | 2700 | 1350 | 446 | 0 |
| Bradbury | 2139 | 1711 | 1283 | 855 | 428 | 141 | 0 |
| Burbank | 46295 | 37036 | 27777 | 18518 | 9259 | 3055 | 0 |
| Calabasas | 11253 | 9002 | 6752 | 4501 | 2251 | 743 | 0 |
| Carson | 3416 | 2733 | 2050 | 1366 | 683 | 225 | 0 |
| Commerce | 29367 | 23493 | 17620 | 11747 | 5873 | 1938 | 0 |
| Compton | 26596 | 21276 | 15957 | 10638 | 5319 | 1755 | 0 |
| Cudahy | 2968 | 2374 | 1781 | 1187 | 594 | 196 | 0 |
| Downey | 19532 | 15625 | 11719 | 7813 | 3906 | 1289 | 0 |
| Duarte | 6105 | 4884 | 3663 | 2442 | 1221 | 403 | 0 |
| El Monte | 21104 | 16883 | 12662 | 8442 | 4221 | 1393 | 0 |
| Glendale | 70157 | 56126 | 42094 | 28063 | 14031 | 4630 | 0 |
| Hidden Hills | 1832 | 1465 | 1099 | 733 | 366 | 121 | 0 |
| Huntington Park | 9580 | 7664 | 5748 | 3832 | 1916 | 632 | 0 |
| Irwindale | 6176 | 4941 | 3706 | 2470 | 1235 | 408 | 0 |
| La Cañada Flintridge | 16748 | 13398 | 10049 | 6699 | 3350 | 1105 | 0 |
| Los Angeles | 687423 | 549938 | 412454 | 274969 | 137485 | 45370 | 0 |
| Los Angeles County | 155112 | 124089 | 93067 | 62045 | 31022 | 10237 | 0 |
| Lynwood | 14101 | 11280 | 8460 | 5640 | 2820 | 931 | 0 |
| Maywood | 3065 | 2452 | 1839 | 1226 | 613 | 202 | 0 |
| Monrovia | 23344 | 18675 | 14006 | 9337 | 4669 | 1541 | 0 |
| Montebello | 25185 | 20148 | 15111 | 10074 | 5037 | 1662 | 0 |
| Monterey Park | 19450 | 15560 | 11670 | 7780 | 3890 | 1284 | 0 |
| Paramount | 13726 | 10981 | 8236 | 5490 | 2745 | 906 | 0 |
| Pasadena | 55999 | 44799 | 33599 | 22400 | 11200 | 3696 | 0 |
| Pico Rivera | 6977 | 5581 | 4186 | 2791 | 1395 | 460 | 0 |
| Rosemead | 13653 | 10922 | 8192 | 5461 | 2731 | 901 | 0 |
| San Fernando | 6674 | 5579 | 4184 | 2789 | 1395 | 460 | 0 |
| San Gabriel | 10172 | 8137 | 6103 | 4069 | 2034 | 671 | 0 |
| San Marino | 7196 | 5756 | 4317 | 2878 | 1439 | 475 | 0 |
| Santa Clarita | 451 | 360 | 270 | 180 | 90 | 30 | 0 |
| Sierra Madre | 5806 | 4644 | 3483 | 2322 | 1161 | 383 | 0 |
| Signal Hill | 4717 | 3774 | 2830 | 1887 | 943 | 311 | 0 |
| Simi Valley | 69 | 55 | 41 | 27 | 14 | 5 | 0 |
| South El Monte | 8000 | 6400 | 4800 | 3200 | 1600 | 528 | 0 |
| South Gate | 21952 | 17562 | 13171 | 8781 | 4390 | 1449 | 0 |
| South Pasadena | 7454 | 5963 | 4472 | 2981 | 1491 | 492 | 0 |
| Temple City | 8786 | 7029 | 5272 | 3514 | 1757 | 580 | 0 |
| Vernon | 23602 | 18881 | 14161 | 9441 | 4720 | 1558 | 0 |

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm year is defined as October 1 to September 30 herein.

³ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

3) The Regional Board will review and reconsider the Final watershed Allocations once a reduction of 50% has been achieved and sustained in the watershed.

the Trash TMDL. Appendix 7-1 sets forth municipal action levels for measuring compliance with these effluent limitations

Addition of New Part 7:

PART 7 - TOTAL MAXIMUM DAILY LOAD PROVISIONS

The provisions of this Part implement and are consistent with the assumptions and requirements of Waste Load Allocations from TMDLs for which some or all of the Permittees in this Order are responsible.

I. TMDL for Trash in the Los Angeles River Watershed

A. **Waste Load Allocations:** Each Permittee identified in Appendix 7-1 shall comply with the interim and final effluent limitations set forth in Appendix 7-1 hereto.²

B. **Compliance:**

(1) Permittees may comply with the effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, or *institutional controls*, as described below, and any combination of these may be employed to achieve compliance:

(a) **Full Capture Systems:**

- 1) The Basin Plan authorizes the Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System." (See Appendix 7-2.)³
- 2) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of paragraph 3), immediately below, and any conditions in the certification, continue to be met.
- 3) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdiction until all areas draining to the Los Angeles River system are addressed. For purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where

² The interim and final effluent limitations set forth in Appendix 7-1 are equivalent to the Compliance Points identified in Table 7-2.3 of the Basin Plan.

³ The Regional Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device.

Joyce Dillard

From: Ivar Ridgeway
To: la_trash@waterboards.ca.gov
Date: 11/9/2009 9:57 AM
Subject: Fwd: Comments on Public Notice No. 09-117 Reopener the Los Angeles County Municipal Separate Storm Water Sewer System (MS4) Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order No. R4-2006-0074 and R4-2007-0042) Waste Discharge Requirements (WDRs) due 11/9/2009 by 12 PM
Attachments: LA%20MS4%20Trash%20Reopener%20Hearing%20Notice.pdf

>>> Joyce Dillard <dillardjoyce@yahoo.com> 11/9/2009 9:30 AM >>>

Comments on Public Notice No. 09-117 Reopener the Los Angeles County Municipal Separate Storm Water Sewer System (MS4) Permit (NPDES No. CAS004001, Board Order No. 01-182 as amended by Order No. R4-2006-0074 and R4-2007-0042) Waste Discharge Requirements (WDRs) due 11/9/2009 by 12 PM

How does this reopener to the Basin Plan change the non-adjudicated status of the Hollywood Basin ?

How does this reopener to the Basin Plan change the non-adjudicated status of the Santa Monica Basin (not applicable to this reopener)?

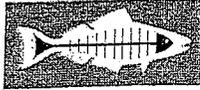
Why are the Upper Los Angeles River Area Basins considered in the Basin Plain of the Coastal Watersheds of Los Angeles and Ventura Counties ?

Why is the Hollywood Basin considered in the Basin Plain of the Coastal Watersheds of Los Angeles and Ventura Counties ?

How is private property being monitored for compliance? Have the private property owners been named in any legal action over any of these MS4 and/or NPDES requirements?

Joyce Dillard
P.O. Box 31377
Los Angeles, CA 90031

Heal the Bay



Heal the Bay

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November 9, 2009

Ms. Tracy Egoscue
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA EMAIL: la_trash@waterboards.ca.gov; tegoscue@waterboards.ca.gov

Re: Proposed Reopener of Waste Discharge Requirements for the County of Los Angeles Municipal Storm Water Discharge Permit to Incorporate Provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load ("Reopener")

Dear Ms. Egoscue,

On behalf of Heal the Bay and our over 13,000 members, thank you for the opportunity to comment on the proposed reopener to the Los Angeles County Municipal Stormwater ("L.A. MS4") permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load ("L.A. River Trash TMDL"). Federal law mandates that the Los Angeles Regional Water Quality Control Board ("Regional Board") integrate TMDLs into NPDES permits. Thus, in general, we support staff's proposal for the Reopener. However, it is critical that staff expand the scope of this Reopener to include additional TMDLs that are in effect such as the Ballona Creek Trash TMDL.

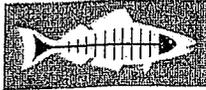
As discussed in the public notice (No. 09-117), "[t]he validity of the Trash TMDL is not an issue before the Regional Board in this proceeding." Thus we will limit our comments below to the merits of the Reopener and only incorporate by reference Heal the Bay's August 21, 2006 comment letter to the Regional Board which describes our strong support of the L.A. River Trash TMDL.¹

I. The Regional Board's Proposal Is Required By Law.

Federal law clearly commands that the Regional Board integrate the L.A. River Trash TMDL into the effluent limitations of appropriate NPDES permits. Specifically, Federal regulations require 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 pursuant to 40 CFR 130.7. (40 CFR § 122.44(d)(4)(vii)(B).)

¹ Heal the Bay requests that the Heal the Bay's August 21, 2006 be included in the administrative record for this matter. This evidence is relevant to demonstrate the impact of trash in the environment and provide details on the history of the LA River Trash TMDL adoption.



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In fact, the Regional Board has, in other ongoing proceedings, stated that the Environmental Protection Agency has underscored that "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs." Correspondence from Executive Officer Jonathan Bishop to Elizabeth Miller Jennings (June 15, 2006) (citing "Establishing Total Maximum Daily Loads (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs," USEPA, 2002.) Federal law leaves no room for the Regional Board to *not* assure that the Los Angeles County MS4 Permit contains limitations consistent with already established WLAs, and the underlying L.A. River Trash TMDL. Thus, the effluent limits set by the L.A. MS4 permit must be consistent with the L.A. River Trash TMDL's wasteload allocations.

II. Staff's Proposal is Consistent with Regional Board and State Board Actions and USEPA Guidance.

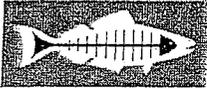
As you are aware, The Los Angeles Regional Board integrated TMDL limits for the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL and Marina del Rey Harbor Mother's Beach and Back Basins Bacteria TMDL into the L.A. MS4 permit in 2006 and 2007, respectively. In fact, the State Water Resources Control Board adopted an Order on August 4, 2009 that denied the County of Los Angeles's claims against this Regional Board action to include the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL in the L.A. MS4 permit (see Order No. WQ 2009-0008). In addition, the recently adopted Ventura County MS4 included all TMDLs in effect in Ventura County and their corresponding wasteload allocations and implementation schedules. Other regional water boards have also followed suit. For example, the recently adopted *Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County* (Order No. R8-2009-0030)² by the Santa Ana Regional Board incorporates numeric TMDL wasteload allocations into the permit. Hence, there is nothing new or unique about incorporating the L.A. River Trash TMDL into the L.A. MS4 permit and this process has been upheld by the State Board.

In addition, the proposed Reopener is consistent with USEPA policy. In a letter to the State Water Resources Control Board from Alexis Strauss, Director of USEPA Region 9 Water Division, Ms. Strauss states that:

"...the permitting authority also has the discretion to express permit conditions for municipal stormwater dischargers as numeric limits where appropriate....It would be consistent with EPA's regulations and the recommendations in this guidance [Based Establishing TMDL Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs] for a permitting agency to decide it is appropriate to use numeric limits."³

² Heal the Bay requests that Order No. R8-2009-0030 be included in the administrative record for this matter. This evidence is relevant to demonstrate that other regional water boards have incorporated TMDL wasteload allocations expressed as numeric effluent limits in MS4 permits.

³ Heal the Bay requests that the USEPA letter be included in the administrative record for this matter. This evidence is relevant to demonstrate that USEPA has agreed that WLAs expressed as numeric limits are appropriate for MS4 permits.



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Integration of the L.A. River Trash TMDL at this time makes all the more sense because California's focus on the reduction of marine debris. On November 20, 2008 the California Ocean Protection Council adopted an *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter*.⁴ This landmark Strategy lays out ambitious actions for eliminating harmful trash from entering the Pacific Ocean statewide. As the OPC has recognized, the growing amount of trash in our oceans is choking marine life, crippling regional economies and diminishing quality of life along California shorelines. Stormwater runoff carries trash and other pollutants directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated.

III. The Regional Board Should Broaden the Scope of the Reopener to Include Additional TMDLs.

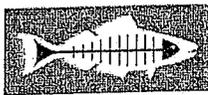
As acknowledged by Regional Board staff in various workshops and hearings, the renewal of the long overdue L.A. MS4 will likely be a multiple year process. Thus it is even more critical that the proposed Reopener include all applicable TMDLs that are in effect in Los Angeles County. At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. It is unclear why the proposed scope of the reopener is so narrow. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well? This seems like a logical extension of the Reopener and would require little staff resources.

Also of note, the plethora of water quality issues in the Malibu Creek Watershed has dominated the discussion at several Board hearings over the past year. In order to improve water quality in this area, enforceable TMDLs are critical. Heal the Bay believes that if nutrient WLAs were in the L.A. MS4 permit, then the Malibu Creek watershed TMDLs would finally be enforceable. This is a critical tool in catalyzing any significant progress towards water quality standards attainment in the watershed. Also, the TMDL was developed and approved by USEPA over 6 years ago, so inclusion of the WLAs in the permit should have occurred a long time ago. Thus, the Regional Board should also include the Malibu Nutrients and Bacteria TMDLs in the Reopener. We have included example language for several additional TMDLs in Attachment A.

IV. The Regional Board Should Clarify that Compton Creek and other Tributaries are Covered by the L.A. River Trash TMDL.

At the July 16, 2009 Regional Board hearing on the 2008 303(d) List in response to public and Board inquiry, staff noted that the Compton Creek Trash impairment listing would be addressed under the L.A. River Trash TMDL. The Reopener states that "[f]or purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where certified full capture systems treat all drainage from the area..." Part 7, Section 1. B.3. However, this statement is only included under the "full capture device" section and does not specify the tributaries. The factsheet specifies individual tributaries in a footnote ("Tributaries to the Los Angeles River include but are not limited to Pacoima Wash, Tujunga Wash, Burbank Western Channel, Verdugo Wash, Arroyo Seco, the Rio Hondo, and Compton Creek) but

⁴ Heal the Bay requests that the OPC's *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter* be included in the administrative record for this matter. This evidence is relevant to demonstrate that trash reduction is a state priority.



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this information is not contained in the permit. Factsheet at 1. Staff should specify in the overarching Reopener language that Compton Creek and other tributaries are included in the scope of the L.A. River TMDL so that there is no ambiguity.

V. Many of the Cities that May Oppose Incorporation of this TMDL Have Received Millions of Dollars of Federal Stimulus Money from the State to Reduce Trash in the Los Angeles River.

The "Gateway IWRM Authority"⁵ recently was awarded \$10 million from the State Water Resources Control Board Clean Water State Revolving Fund as part of the American Recovery and Reinvestment Act.⁶ As explained in the grant award document, these funds were specifically given to assist the cities in their compliance with the Los Angeles River Trash TMDL by supporting acquisition of full capture devices for literally thousands of catch basins in the watershed. In fact in a presentation made by Desi Alvarez, Director of Public Works of the City of Downey, to the Regional Board at the November 5, 2009 hearing, Mr. Alvarez discussed this funding and stated that all 16 cities that had received the funding were on track for 100% compliance by the TMDL compliance deadline. Some of those same municipal recipients have long opposed the trash TMDL and continue to do so. The Regional Board should not be dissuaded by these cities' arguments about cost or feasibility when these cities have acknowledged feasibility in their grant request to the State Board and have accepted taxpayer funds to address the problem specifically in the Los Angeles River Watershed.

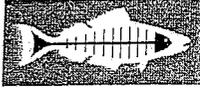
Heal the Bay requests that the information from the Gateway grant request as well as the State Water Board's allocation of funds to those cities be included in the administrative record for this matter. This evidence is relevant to the cities' ability to comply with the TMDL as incorporated into the stormwater permit and to the State Water Board's support for their efforts to comply.

VI. The Regional Board Should Modify the Proposed Reopener Language.

In general, the Regional Board should streamline the proposed Reopener language in Part 7. The proposed Reopener language includes a detailed discussion of compliance determination and Monitoring and Reporting Requirements. Reopener at Part 7, 1.B.-C. While this is important information, the Regional Board should describe these elements in a document outside of the L.A. County MS4 or incorporate the information by reference. Including this detailed information within the permit overly complicates the requirements. If the Regional Board were to take this same detailed approach for all TMDLs in effect in Los Angeles County (which, as stated earlier, should be included within the proposed MS4 Reopener), there would be potentially a hundred or more pages added to an already lengthy and complex permit. Instead, the Regional Board should simply include numeric WLAs as effluent limits and required implementation actions and milestones in Part 7. We suggest following the approach taken in the recently adopted Ventura County MS4. As an example,

⁵ Participants in the grant request included Bell, Bell Gardens, Commerce, Compton, Cudahy, Downey, Huntington Park, Long Beach, Lynwood, Maywood, Montebello, Paramount, Pico Rivera, South Gate, and Vernon. See Los Angeles Gateway Region Storm Drain Catch Basin Retrofit Project (attached hereto with portions available at https://faast.waterboards.ca.gov/attachments/proposal_16004/attachment_45824.PDF, PIN# 16004

⁶ See Clean Water State Revolving Fund American Recovery and Reinvestment Act Status Report as of Oct 30, 2009 (attached hereto and available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/economic_recovery/stimulus_report.pdf)



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we have proposed alternate language for several TMDLs (See Attachment A). This alternate approach will allow for all TMDLs that are in effect to be more easily incorporated in the MS4.

At a minimum, the Regional Water Board should make the following clarifications to Part 7:

Section 1.B.1.(b).1. The proposed Reopener discusses interim and final compliance determination for partial capture devices and institutional controls. However, it appears that this section allows for final compliance with the use of only partial capture devices. ("Trash discharges from areas serviced solely by partial capture devices may be estimated based on demonstrated performance of the device(s) in the jurisdictional area.") On its face, this would obviously not make sense given the definition of a partial (not full) capture device. The Regional Board should clarify this section.

Section 1.B.1.(a).3. The proposed Reopener appropriately describes that the entire L.A. River system must be addressed for compliance purposes ("For purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where certified full capture systems treat all drainage from the area..."). This is consistent with the adopted Basin Plan Amendment. However, this is only described in the section on "Full Capture Systems". This should be included as an overarching concept for the Reopener. Also as described above, the specific tributaries should be included.

In sum, we strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load. This action is consistent with the law and previous Regional Board and State Board action. Also this route is clearly described in the adopted L.A. River Trash TMDL: "This TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.)" However, we urge staff to expand the scope to ensure that all adopted TMDLs are enforceable, which in turn will lead to improved water quality in Region 4.

As a designated "party" to the hearing, we request 30 minutes to speak at the December 10, 2009 hearing on the Reopener. We also request the opportunity to cross-examine any witnesses of other designated parties. Depending on the number of witnesses, we estimate the need for an additional 15-30 minutes for cross-examination.

Sincerely,

Kirsten James
Water Quality Director

Mark Gold, D. Env
President

Los Angeles Stormwater Quality Partnership

Los Angeles



Stormwater Quality Partnership

Partner Cities:

Agoura Hills

Azusa

Beverly Hills

Calabasas

Hidden Hills

Monrovia

Norwalk

Rancho Palos

Verdes

Westlake Village

November 5, 2009

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

Subject: Comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Dear Mr. Ridgeway:

Thank you for this opportunity to provide comments regarding incorporating the provisions of the Los Angeles River Trash Total Maximum Daily Load (TMDL) into the current Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Permit). As you may be aware, representatives and members of the Los Angeles Stormwater Quality Partnership (LASQP) attended the July 29, 2009 staff workshop and submitted written comments on the subject on July 28, 2009.

This group of nine Los Angeles County cities was formed with the intent of establishing a continuing and sustained working relationship between the municipal stormwater permittees and the California Water Quality Control Board for the Los Angeles Region (Regional Water Board). It is hope and goal to form a relationship focused on improving stormwater quality through a constructive and collaborative effort. In that spirit, and in our communications to the Regional Water Board on this matter, we have encouraged Regional Water Board staff to consider and incorporate two specific elements. These were to:

- 1) *Explicitly recognize and include the TMDL review / reconsideration step at the sustained 50% reduction mark; and*
- 2) *Allow for options in demonstrating achievement with Waste Load Allocation (WLA), i.e., "compliance monitoring", including quantification of reductions from full capture, partial capture, institutional controls, and other equivalents.*

LASQP recognizes and appreciates that these have in fact been explicitly incorporated into the proposed Permit revisions. Regarding the first element, the review / reconsideration step is critical to both our and the Regional Water Board's ability to adaptively manage implementation of the TMDL. LASQP is willing to work with Regional Water Board staff to provide further clarification of the concept of a "sustained" reduction for purposes of review / reconsideration of the TMDL and its effectiveness.

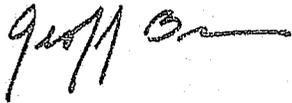
320 North Larchmont
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LASQP comments regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit

Regarding the second element, providing options for demonstrating WLA achievement, such as through full capture, partial capture, and institutional controls, is also critical since many cities' trash-related characteristics differ (sources, amounts, locations, impacts, infrastructure, financing, etc.), however as the TMDL is implemented, cities will likely need to adapt their implementation actions and will need access to all options for demonstrating WLA achievement.

Thank you for the opportunity to provide input regarding incorporating the provisions of the Los Angeles River Trash TMDL into the Los Angeles County MS4 permit. We look forward to continuing to work with you as these new permit provisions continue to be implemented. Feel free to contact me with questions.

Sincerely,
Los Angeles Stormwater Quality Partnership



Geoff Brosseau
Environmental Management / Technical Consultant

cc: LASQP Member Cities

November 5, 2009

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VIA OVERNITE EXPRESS
FOR MONDAY MORNING DELIVERY

Mr. Ivar Ridgeway
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Comments on Proposed Modifications to the County of Los Angeles Municipal Separate Storm Sewer System Permit Regarding the Los Angeles River Trash Total Maximum Daily Loads

Dear Mr. Ridgeway:

These comments and attached documentation are being submitted on behalf of the Cities of Arcadia, Carson, Commerce, Downey, Irwindale, Monterey Park, Signal Hill, South Gate and Vernon, and the ad hoc group of cities known as the Coalition for Practical Regulation¹ (hereafter collectively "Cities"), in connection with an October 8, 2009 Notice from the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") requesting comments, evidence and scheduling a public hearing on proposed action to incorporate provisions of the Los Angeles River Trash Total Maximum Daily Load ("TMDL") into the existing Los Angeles County Municipal Stormwater Discharge Permit ("NPDES No. CAS004001," hereafter "MS4 Permit," "NPDES Permit" or "Permit"). We ask that these comments and attached documentation be included in the administrative record for this matter.

¹ The Coalition for Practical Regulation also known as "CPR" is an ad hoc group of municipalities in Los Angeles County committed to obtaining clean water through cost-effective and reasonable storm water regulations, and consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.

Mr. Ivar Ridgeway
November 6, 2009
Page 2

Before discussing the substantive concerns with the Proposed Amendment, the Cities must first object to the limited Administrative Record reflected in the Index of Administrative Record sent October 15, 2009, prepared by Regional Board Staff in connection with the upcoming December 10 hearing. Specifically, the Cities previously submitted Comments dated July 27, 2009, along with a series of exhibits to the Regional Board in response to a July 6, 2009 Notice of a Workshop on this matter. Further, certain Cities attended the workshop conducted on July 29, 2009. Yet, the Index of the Administrative Record does not reflect a submission of these July 27 Comments, nor apparently any other comments submitted in connection with the July Workshop. As such, the Cities respectively request that their comments dated July 27, 2009 along with all exhibits included therewith and all other Comments submitted by interested parties, along with the Record of any Comments provided during the Workshop on July 29, 2009, be made a part of the Administrative Record and be available for the Board's consideration prior to amending the NPDES permit in question. The Index to the Administrative Record should similarly be corrected.

Turning to the substance of the proposed modification to the Permit in question, for the reasons set forth below and as asserted in previous comments in connection with the July 29, 2009 Workshop, it is inappropriate to revise the NPDES Permit as proposed, and specifically it is inappropriate to "implement the Trash TMDL with numeric effluent limitations" in a municipal separate storm sewer system ("MS4") permit under the present circumstances, for the following reasons:

(1) Because the Clean Water Act (33 USC § 1251 *et seq.* - "CWA" or "Act") does not require that the subject NPDES Permit include numeric effluent limits, any attempt to include either a numeric effluent limit for purposes of the Trash TMDL, or any other numeric effluent limit for any other TMDL into the NPDES Permit in issue, is an attempt to impose a requirement that clearly goes beyond the requirements of the Clean Water Act. Finding 45 of the Proposed Permit Amendment makes clear that the Proposed Amendment is designed to implement the TMDL through "numeric effluent limitations." Further, Proposed Finding 51 and pages 23-24 of the Fact Sheet, demonstrate the Regional Board's intent to utilize the Permit Amendment to obtain "strict enforcement of the WLAs." As such, the Regional Board is proposing to impose new permit terms that go beyond what is required under the CWA, and therefore all requirements under the California Porter-Cologne Act ("PCA") must be complied with by the Regional Board before such new Permit terms may be imposed.

Under the PCA, the inclusion of any such numeric effluent limits into the NPDES Permit can only lawfully be accomplished by the Regional Board after it has first conducted the analysis and considered the factors required under California Water Code sections 13241 and 13000.²

² All section references are to the California Water Code unless otherwise specified.

Mr. Ivar Ridgeway
November 6, 2009
Page 3

(See *City of Burbank v. State Board* (2005) 35 Cal.4th 613 (“*Burbank*”).) And because the Regional Board appears to have admitted it did not even attempt to conduct such an analysis, at least in accordance with section 13241 (claiming such an analysis was not “necessary to support these effluent limitations”), no action to incorporate the Trash TMDL, as proposed, can lawfully be taken at this time. Moreover, requiring strict compliance with numeric effluent limits for the Trash TMDL, where the WLAs are, in fact, actually unachievable (and where deemed compliant full capture devices show an iterative Best Management Practices (“BMPs”) approach is necessary), sets the wrong precedent for the incorporation of other TMDLs that cannot be complied with through iterative MEP-compliant BMPs.

(2) In a Guidance Memorandum dated November 22, 2002, EPA Headquarters established federal policy for incorporating waste load allocations (“WLAs”) into stormwater Permits. Under this EPA Policy, “[b]ecause 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 discharges.... Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits would be used only in *rare instances*.” (EPA Guidance Memo, p. 4, Exhibit “1” hereto.) EPA went on to conclude that for Municipal NPDES Permits, any water quality based effluent limit for such discharges “should be expressed as best management practices (BMPs), rather than as numeric effluent limits.” (*Id.*) The Cities request that this policy issued by US EPA Headquarters in Washington, DC, be followed, and that because no “findings” have been included with the proposed Permit Amendment in question to support a determination that the Trash TMDL is the “rare case,” that the Proposed Amendment not be adopted.

(3) Any incorporation of a TMDL into the MS4 Permit in question is premature at this time in light of the Orange County Superior Court’s recent decision in *City of Arcadia v. State Board*, OCSC Case No. 06CC02974 (the “*Arcadia Case*”). As recognized by the State Board in Order No. WQ 2001-06, and as quoted in Order No. WQ 2009-0008, “water quality standards provide the *foundation* for identifying impaired waters that require a TMDL.” (Order No. 2009-0008, p. 2.) In the *Arcadia Case*, the Superior Court issued a Judgment and Writ of Mandate requiring that the State and Regional Boards review the “water quality standards” in the Basin Plan for the Los Angeles Region (“Standards” or “Water Quality Standards”) and comply with the requirements of sections 13241 and 13000 with respect to Stormwater discharges (which was defined by the Court and agreed to by the parties as including “urban runoff”).³ The Superior Court also required said Boards to correct the improperly designated “potential” use designations upon which many of the Water Quality Standards in the Basin Plan are based.

³ As used herein, consistent with the definition of “Stormwater” under the federal regulations, the term “Stormwater” includes urban runoff, *i.e.*, “surface runoff and drainage.”

Mr. Ivar Ridgeway
November 6, 2009
Page 4

Ironically, while the proposed Permit Amendment discusses prior lawsuits involving the Trash TMDL, it makes no mention of the *Arcadia* Case or of the Superior Court's decision requiring both the State and Regional Boards to revise the Standards to correct the improperly designated "potential use" designation, and to conduct the 13241/13000 analysis of the Standards in relation to Stormwater. (*See, e.g.*, Finding 51 of the Proposed Amendment, which, in part, provides that: "Depending upon the compliance strategy selected by each Permittee, compliance with the effluent limitations set forth in Appendix 7-1 may require a demonstration that the Permittee *is in strict compliance with water quality standards.*")

Developing Standards in accordance with law before enforcing them is particularly important in connection with the subject Trash TMDL because not only has the Water Code section 13241/13000 analysis never been conducted *vis-a-vis* Stormwater for any of the Standards upon which the Trash TMDL is based, it is also clear from the face of the Trash TMDL Report that the TMDL was developed, in part, to protect improperly designated "potential" beneficial uses. As such, although the Superior Court's Judgment and Writ of Mandate in the *Arcadia* Case are presently on appeal, if upheld, they will require a review and potential modification of all existing Standards in the Basin Plan *vis-a-vis* Stormwater, as well as revisions to all Standards that are based on "potential" uses. Accordingly, the Trash TMDL and all other adopted TMDLs must be reevaluated and readopted *before* being incorporated in any fashion into the subject NPDES Permit.

(4) Incorporation of the Trash TMDL into the subject NPDES Permit is further premature and inappropriate at this time given that all Permittees have already submitted timely applications to renew the existing MS4 NPDES Permit. Thus, contrary to the assertion in the Fact Sheet that "[w]aiting until Permit reissuance would prevent full implementation of the TMDL's regulatory requirements for several years after compliance is required," there should be no delay in reissuing the NPDES Permits outside of the delay created by the Regional Board's own refusal to timely process the Cities' Permit renewal applications. In fact, the NPDES Permit in issue expired nearly three years ago, on December 12, 2006. Accordingly, rather than modify the existing NPDES Permit to incorporate a single TMDL, the Cities respectfully request that their renewal applications be finally processed, and that any incorporation of the subject TMDL be conducted at such time as the existing NPDES Permit is renewed and after the *Arcadia* Case decision has become final.

(5) The implication with the new definition of "Drainage" under the Permit that "urban runoff" is not "stormwater," is contrary to the plain language of the federal regulations to the CWA, as well as prior State Board Orders and representations of State and Regional Boards' counsel in the *Arcadia* Case. Also contrary to the plain language of the CWA is the statement in the Fact Sheet (p.11-12) that the "maximum extent practicable" ["MEP"] standard under the Clean Water Act only applies to discharges of pollutants "*from storm water.*" Such proposed Permit terms are contrary to law and their adoption would constitute an abuse of discretion.

Mr. Ivar Ridgeway
November 6, 2009
Page 5

(6) The proposed incorporation of the TMDL includes additional monitoring and reporting requirements to be adhered to by the Permittees. Yet, Sections 13225 and 13267 require that a cost/benefit analysis be conducted before any monitoring or reporting obligations may be imposed upon the Permittees. The record does not indicate that any such cost/benefit analysis has been conducted, and no Permit modification requiring additional monitoring and reporting requirements may lawfully be adopted at this time until the requirements of Water Code sections 13225 and 13267 have been met.

(7) Because the Proposed Amendment requires the Trash TMDL WLAs to be incorporated into the subject NPDES Permit as strict "numeric effluent limits," *i.e.*, requires incorporation in a manner that is not required by federal law, and because the Proposed Amendment continues to require the Cities to install and maintain trash receptacles at all transit stops within their jurisdictions, such requirements constitute unfunded State mandates which may not be imposed upon the Cities without the State first providing funding in accordance with the requirements of the California Constitution and the implementing Legislation thereunder.

I. BACKGROUND

As in part reflected (although not entirely accurately) in the proposed new Findings to the subject Permit, this Trash TMDL has a storied past. Specifically, the Trash TMDL was initially adopted in January of 2001 (not the September 2001 date suggested in revised Finding 14), with the Regional Board thereafter rescinding this January 2001 TMDL and adopting a new TMDL in September of 2001. No substantive differences appear to exist, however, between the January versus the September 2001 TMDLs. Moreover, for reasons that remain unclear, the January 2001 TMDL appears to have never even been submitted to the State Board. Instead it was superseded in its entirety by the Regional Board's September 2001 TMDL. Yet, both the January 2001 and the September 2001 TMDLs contain the same interim and final waste load allocations, as well as the same implementation schedule. Further, both contain only a single means of being deemed in full compliance with the TMDL, *i.e.*, both only contain what is referred to in the Proposed Amendment as the Vortex Separation System ("VSS") full-capture Units. No other deemed compliance measures were included in these initial January and September 2001 versions of the TMDL. Moreover, of all the deemed-compliant measures presently included in the TMDL in issue, the VSS full-capture Units appear to be the most costly to implement and likely the most environmentally intrusive of all the full-capture systems presently permitted.

The State Board and the Office of Administrative Law ("OAL") both approved the Regional Board's September 2001 TMDL in July of 2002. However, prior to this approval, US EPA adopted its own Trash TMDL for the Los Angeles River in March of 2002. Yet, on August 1, 2002, EPA rescinded its March, 2002 TMDL and simultaneously then approved the State Trash TMDL (the Regional Board's September 2001 Trash TMDL).

Mr. Ivar Ridgeway
November 6, 2009
Page 6

In August of 2002, three separate lawsuits were then filed, one by the County of Los Angeles, one by the City of Los Angeles, and a third by the twenty-two cities involved in the *Cities of Arcadia, et al. v. State Board* Trash TMDL case which resulted in a published decision at 135 Cal.App.4th 1392. The lawsuits filed by the County and the City of Los Angeles were settled, with the Regional Board committing to, among other things, reopening the Trash TMDL once fifty percent reductions in trash had been achieved. The *Arcadia v. State Board* lawsuit filed by the twenty-two cities proceeded to trial, and contrary to the implication of Finding 14 of the Proposed Amendments, a majority of the substantive issues raised by the twenty-two cities before the trial court were resolved in favor of such cities. Moreover, on appeal, the Court of Appeal in the *Arcadia v. State Board* case upheld the trial court's determination that the Regional and State Boards had failed to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.*, finding, in part, as follows:

As a matter of policy, in CEQA cases a public agency must explain the reasons for its actions to afford the public and other agencies a meaningful opportunity to participate in the environmental review process, and to hold it accountable for its actions. [Citation.] The Water Boards' CEQA documentation is inadequate, and remand is necessary for the preparation of an EIR [Environmental Impact Report] or tiered EIR, or functional equivalent, as substantial evidence raises a fair argument the Trash TMDL may have significant impacts on the environment. The [trial] court correctly invalidated the Trash TMDL on CEQA grounds. (*Cities of Arcadia v. State Board* (2006) 135 Cal.App.4th 1392, 1426.)

As stated above, the Trash TMDL adopted by the Regional Board in September of 2001 identified only one deemed full compliant measure, *i.e.*, the VSS Units. Yet, the Court of Appeal in *Arcadia v. State Board* recognized that the cost to install such VSS Units, as estimated by the Regional Board, ranged from \$332 million to \$945 million, with the Court finding that "[n]either the checklist nor the Trash TMDL includes an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures, and in fact the Water Boards' developed no argument as to how they ostensibly complied with the statute. . . . the Trash TMDL sets forth various compliance methods, the general impacts of which are reasonably foreseeable but not discussed." (*Id.* at 1425-26.) The lack of an environmental analysis of the potential environmental impacts created by the September 2001 Trash TMDL was the primary reason the Appellate and trial courts both found that the Water Boards violated CEQA.

The Regional Board thereafter adopted the present Trash TMDL in August of 2007. This 2007 TMDL was then approved by the State Board and the OAL, as well as US EPA, in September of 2008. However, the present Trash TMDL is markedly different from the

Mr. Ivar Ridgeway
November 6, 2009
Page 7

September, 2001 Trash TMDL, in that not only does the current TMDL contain a much more thorough analysis of the foreseeable environmental impacts expected from the implementation of the Trash TMDL, but it also identifies a series of effective full-capture devices which are much less costly to install and maintain than the very costly VSS Units. These other deemed-compliant full-capture devices include: trash nets, two gross solid removal devices, catch basin brush inserts and mesh screens, vertical and horizontal trash capture screen inserts and a connector pipe screen device. Such additional full-capture systems are, in fact, the full-capture systems most of the Cities have chosen to rely upon for implementation purposes, and these alternative full-capture devices are universally preferred by the Cities over the VSS Units. Moreover, to date, very few VSS Units have been installed throughout the County, as opposed to the installation or planned installation of tens of thousands of the other alternative full-capture devices identified in the current Trash TMDL.

The Proposed Amendment to the Permit seeks to simply incorporate the Waste Load Allocations ("WLAs") from the most recent Trash TMDL into the NPDES Permit, and to enforce these WLAs as "numeric effluent limitations," asserting that "while there may be other ways to incorporate the compliance points from the TMDL into permit conditions, the Regional Board is *not aware of* any other mechanisms that would result in actual compliance with the requirements of the TMDL as it was intended." (Proposed Amendment, Findings 45 and 46.) Finding 51 then describes the compliance strategy under the Proposed Amendment as allowing the Regional Board to "require" demonstration that the Permittee is in "strict compliance with Water Quality Standards," with the Fact Sheet similarly indicating the Regional Board's intent to obtain "strict enforcement of the WLAs." The claim that the Regional Board "*is not aware*" of other mechanisms to achieve compliance with the WLAs is, of course, not a legitimate "finding" that can rightfully be used to support applying "numeric effluent limitations" to Stormwater discharges, and specifically is not an appropriate finding to support the "rare instance" noted by EPA as to when "numeric effluent limits" may appropriately be applied to Municipal Stormwater dischargers. (*See Exhibit "1,"* EPA November 2002 Guidance Memorandum, p. 4.)

The historical discussion above not only shows that a good number of "other mechanisms" were developed over time since the January 2001 Trash TMDL was adopted, consistent with the iterative BMP approach referenced by US EPA in its November 2002 Guidance Memorandum, it further shows that "actual compliance" with the final WLA of "zero" in the Trash TMDL is a fiction. The fact that "actual compliance" with the zero WLA is never referenced anywhere in the Permit Amendment as being achievable (with the Permit Amendment instead providing that compliance with the Permit Amendment is "practicable" because of the availability of deemed full-capture BMPs), confirms that "strictly" complying with the "zero" trash limit is unreasonable and not economically achievable, and that "strict compliance" with the WLAs is only possible through an iterative deemed-compliance BMP approach.

Mr. Ivar Ridgeway
November 6, 2009
Page 8

Accordingly, the litigation history described above and the iterative development of the various full-capture devices to be utilized as "deemed" compliance with the TMDL, reinforces the fact that that TMDL is not the "rare case" where numeric effluent limits must be applied to achieve strict compliance with the WLAs, and that the opposite is the case here, *i.e.*, that compliance is only "reasonably achievable" through the use of iterative BMPs. In sum, it was because of the lengthy litigation process, including the decision of the Court of Appeal in *Arcadia v. State Board, supra*, 135 Cal.App.4th 1392 to require the Water Boards to finally comply with the requirements of CEQA, that viable and more cost-effective deemed-compliant devices were able to be developed to address the problem of trash within the Region, rather than the forced expenditure of \$332 million to \$945 million to install VSS Units throughout the Region.

Yet, the incorporation of the Trash TMDL into the NPDES Permit must now itself still be conducted in accordance with applicable State and federal law, specifically including, but not limited to, the need to develop "reasonably achievable" and "economically" defensible Permit requirements thereunder, including developing such Permit requirements only after the "foundation" of the current TMDL, *i.e.*, the Standards upon which they are based, have been developed in accordance with applicable law as required by the Superior Court in the *Arcadia* Case.

In addition to the above-referenced lawsuits challenging the Trash TMDL, other litigation had also ensued regarding the requirement in the existing Permit mandating that the Permittees place and maintain trash receptacles at all transit stops within their respective jurisdictions. Because this Permit provision imposes an unfunded State Mandate upon the Permittees, a test claim was filed by the County and various other City Permittees, with the State Commission on Mandates ("Commission"). Initially, the Commission refused to hear the matter, asserting that the constitutional prohibition in the California Constitution was not applicable to NPDES Permits. However, in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, the Appellate Court overturned the Commission's determination in this regard, and found that NPDES permits were not exempt from the constitutional prohibition on imposing unfunded mandates upon municipalities. (*Id.* at 920.) According to the Court of Appeal:

In contrast, the constitutional infirmity of *Section 17516(c)* is readily apparent from its plain language that the definition of "[e]xecutive order" does not include *any* order, plan, requirement, rule, or regulation *issued by the State Water ... Board or by any regional water ... board* pursuant to Division 7 (commencing with *Section 13000*) of the Water Code." (§ 17516(c), italics added [by the Court].) This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of *article*

Mr. Ivar Ridgeway
November 6, 2009
Page 9

XIII B, section 6 that subvention of funds is required “[w]henever ... any state agency mandates a new program or higher level of service on any local government” (Italics added [by Court].) We therefore conclude that *Section 17516(c)* is unconstitutional to the extent it excludes “any order ... issued by ... any regional water ... board pursuant to Division 7 (commencing with *section 13000*) of the Water Code” from the definition of “[e]xecutive order.” (*Art. XIII B § 6.*)

(*Id.* at 920.) Following the Court of Appeals’ decision in *County v. Commission on State Mandates*, the plaintiffs in that action pursued a test claim with the Commission to recover the costs incurred to place and maintain trash receptacles at all transit stops within their jurisdictions, as required by the existing NPDES Permit and now by the Permit Amendment. On July 31, 2009, the Commission issued its decision finding that the requirement to install and maintain trash receptacles at all transit stops was an unfunded State mandate requiring funding under the California Constitution. The Commission concluded that, “the following activity in part 4F5c3 of the Permit is a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total maximum daily loads: ‘Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles are to be maintained as necessary.’” (Exhibit “2,” p. 1-2.)

The Proposed Permit Amendment continues to mandate that the Permittees place and maintain such trash receptacles. Accordingly, this provision, along with the requirement to strictly comply with the Trash TMDL’s WLAs, may only be required of the Cities where the State has committed appropriate funding to the Cities to comply with these State mandates.

II. INCORPORATION OF THE TRASH TMDL INTO ANY MUNICIPAL NPDES PERMIT IS PREMATURE.

- A. No TMDL Should Be Incorporated Into The NPDES Permit Until The *Arcadia* Case Has Been Resolved And The Review And Necessary Revisions Of The Water Quality Standards Ordered Therein, Completed.

The incorporation of a TMDL into an NPDES Permit is, in effect, the final step in the process of seeking to enforce Water Quality Standards as against storm water (“Stormwater”)⁴

⁴ As discussed below, the term “storm water” is defined under federal law to include both dry weather and wet weather runoff, *i.e.*, “storm water” plainly includes not only precipitation events but also “urban runoff.” (See Exhibit “3” hereto, which collectively includes the Judgment, Writ of Mandate and the Decision in the *Arcadia* case, with the Superior Court in the *Arcadia* Case

Mr. Ivar Ridgeway
November 6, 2009
Page 10

dischargers. As recognized by the Court of Appeal in *City of Arcadia v. State Board* (2006) 135 Cal.App.4th 1392, 1404, “[a] TMDL must be ‘established’ at a level necessary to implement the applicable water quality standards.” (Also see *City of Arcadia v. EPA* (N.D. Cal. 2003) 265 F.Supp.2d 1142, 1145 [“each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES Permits or establishing nonpoint source controls.”].) As further confirmed by the State Board in Order No. 2001-06, and reiterated in State Board Order No. 2009-08, “water quality standards provide the *foundation* for identifying impaired waters that require a TMDL.”

In the recent *Arcadia* Case, a number of cities successfully challenged the propriety of the Standards in the Basin Plan, and particularly the Water Boards’ failure to conduct a Water Code Section 13241/13000 analysis during the course of the 2004 Triennial Review, along with their failure to correct the improperly designated “potential” use designations in the Basin Plan. As discussed below, the trial court in the *Arcadia* Case determined that the State and Regional Boards are now required to conduct this 13241/13000 review and to make appropriate revisions to the Standards, including deleting the “potential” use designation.

Thus, any consideration of the incorporation of the Trash TMDL, or any other TMDL, into a Municipal NPDES Permit for the Los Angeles Region, should be delayed until such time as the propriety of the Standards, *i.e.*, the “foundation” upon which the TMDL is based, has been reviewed and the Standards corrected. For example, the current Trash TMDL is based on various “potential” use designations, designations which the Superior Court found in the *Arcadia* Case found improper. (See the *Arcadia* Case documents included with Exhibit “3” hereto.) Thus, any attempt to enforce the Trash TMDL to protect mere “potential” beneficial uses, will likely be a significant waste of scarce public resources.

Judgment, at p. 2, fn. 2, citing 40 C.F.R. § 122.26(b)(13) and finding as follows: “Federal law defines ‘storm water’ to include urban runoff, *i.e.*, ‘surface runoff and drainage.’”) In their Opening Appellate Brief filed on June 11, 2009, the Appellant State and Regional Boards conceded that “storm water emanates from diffuse sources, including surface run-off following rain events (hence, ‘storm water’) and urban run-off.” (See Exhibit “4.” which includes portions of the Appellant Boards Opening Brief in the *Arcadia* Case, p. 9, n. 5, along with portions of the Appellants’/Intervenors’ Opening Brief). In the Opening Appellate Brief of the Intervenors/Appellants NRDC, et al. filed on 6/09/09 in the *Arcadia* Case at p. 6, n. 3 (included with Exhibit “4” hereto), said Intervenors/Appellants stated 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 discharger storm sewer systems. A definition of stormwater includes ‘stormwater runoff, snow melt runoff, and surface runoff and drainage.’ (40 C.F.R. § 122.26(b)(13).)”

Mr. Ivar Ridgeway
November 6, 2009
Page 11

Moreover, although the *Arcadia* Case is presently on appeal, at a minimum, in light of the significance of the Superior Court's rulings that the "potential" use designations are improper and are to be replaced with other more appropriate use designation, and that other changes to the Standards may be necessary once the review under Water Code Sections 13241 and 13000 has been completed, any decision to enforce the existing Standards through the incorporation of the Trash TMDL into the subject Permit, should, at a minimum, be delayed until the *Arcadia* Case has been finally decided. To proceed with the incorporation of the Trash TMDL understanding that the Standards supporting the TMDL have been adjudicated as being defective, and thus, that the TMDL itself may need to be revised, is arbitrary and capricious action that will only lead to further litigation.

In the *Arcadia* Case, with respect to the propriety of the Standards in the existing Basin Plan as they are to be applied to Stormwater, in a Notice of Ruling/Decision dated March 13, 2008 (hereafter "Decision" included within Exhibit "3" hereto), the Superior Court, the Honorable Thierry P. Colaw presiding, held, among other things, as follows:

The Standards cannot be applied to storm water without appropriate consideration of the 13241/13000 factors. There is no substantial evidence showing that the Boards considered the 13241/13000 factors before applying the Standards to storm water in the 1975 Plan Adoption, the 1994 Amendment, or the 2002 Bacteria Objective. . . . They must be considered in light of the impacts on the "dischargers" themselves. The evidence before the court shows that the Board did not intend that the Basin Plan of 1975 was to be applied to storm waters when it originally was adopted. The Respondents admit this. "[T]he regional board considered storm water to be essentially uncontrollable in 1975." [Citation.] This was confirmed by the State Board in a 1991 Order when it stated: "**The Basin Plan specified requirements and controls for 'traditional' point sources, but storm water discharges were not covered . . .** The Regional Board has not amended the portions of its Basin Plan relating to storm water and urban runoff since 1975. Therefore, we conclude that the Basin Plan does not address controls on such discharges, except for the few practices listed above. **Clearly, the effluent limitations listed for other point sources are not meant to apply.**" [Citation.] There is no substantial evidence in the record to show that the Boards have ever analyzed the 13241/13000 factors as they relate to storm water. (See Decision p. 5-6; bolding in original.)

Mr. Ivar Ridgeway
November 6, 2009
Page 12

Similarly the Superior Court found that the Water Boards' development of Standards based on mere "potential" uses, was inappropriate, holding:

Section 13241 does not use the word "potential" anywhere in the statute. It does describe the factors previously discussed and specifically states that a factor "to be considered" is "Past, present, and probable future beneficial uses of water." Water C. § 13241(a).

* * *

The real problem is that basing Standards on "potential" uses is inconsistent with the clear and specific requirements in the law that Boards consider "probable future" uses. It is also inconsistent with section 13000 which requires that the Boards consider the "demands being made and to be made" on state waters. (Water C. § 13000 emphasis added.) The factors listed by the Legislature in 13241 were chosen for a reason. *Bonnell v. Medical Bd. Of California* (2003) 31 Cal.App.4th 1255, 1265 [courts will "not accord deference" to an interpretation which "is incorrect in light of the unambiguous language of the statute"]. Respondents have acted contrary to the law by applying the vague "potential" use designations to storm water. (Decision, p. 5.)

In light of the fact that the Trash TMDLs has been based on a set of Standards that, as of this point in time, has been determined to be defective because of the improper inclusion of "potential" use designations, as well as the possible defects created by the Boards' failure to comply with Water Code Sections 13241/13000 as they relate to Stormwater, at a minimum, the Cities respectfully request that the Trash TMDLs not be incorporated into the subject NPDES Permit, until such time as a final decision has been rendered in the *Arcadia* Case, and if the Superior Court's decision is upheld, until such time as the Judgment and Writ of Mandate set forth in that case have been fully complied with. (See the Judgment and Writ of Mandate entered in the *Arcadia* Case by the Superior Court included with Exhibit "3.")

- B. The Term Of The Existing NPDES Permit Expired On December 12, 2006, And The Incorporation Of This Or Any Other TMDL Should Be Addressed In Accordance With The Pending Permit Renewal Process.

The Fact Sheet to the proposed Amendment asserts that "[w]aiting until permit reissuance would prevent full implementation of the TMDL's regulatory requirements for several years

Mr. Ivar Ridgeway
November 6, 2009
Page 13

after compliance is required. Therefore, the Regional Board is reopening the existing Permit during its administrative extension, instead of reissuing the permit at this time.” (Fact Sheet for Proposed Amendment, p. 24.) This statement ignores the fact that the existing NPDES Permit was issued on December 13, 2001, and by its own terms, expired on December 12, 2006 (albeit under the federal regulations, its terms are to remain in effect until a replacement permit is adopted).

The Proposed Amendment and Fact Sheet also ignore the fact that in June of 2006, and in accordance with the requirements of the applicable federal regulations governing the renewal of MS4 Permits, the Cities of Downey, Signal Hill and several other small cities within Los Angeles County, along with the County of Los Angeles, filed Reports of Waste Discharge (“ROWDs”) to renew the subject MS4 Permit. The City of Long Beach has, as well, an application pending for renewal of its MS4 Permit. Yet, the Regional Board, without explanation, has delayed its processing of the various ROWD Applications for approximately three and a half years, and longer for Long Beach, and there is thus no basis to conclude that “permit reissuance” would delay implementation of the TMDL “for several years.”

The only delay in permit reissuance process is the Regional Board’s failure to process the ROWD Applications. And at this time it is unclear when the Regional Board will even commence the renewal process. It is clear, however, that the renewal process is long overdue, as the term of the existing Municipal NPDES Permit expired nearly three years ago, but without the Regional Board having provided any justification for its delay in re-issuing new Permits.

In light of the fact that the renewal process is long overdue, and given the complexities created by incorporating a TMDL into the subject Permit, the proposed incorporation should be conducted as part of the Permit renewal process. To do otherwise at this time is to proceed in a manner that is arbitrary and capricious, and no supportable justification was provided in the Permit Amendment or in the Fact Sheet, to *not* process the ROWD Applications at this time.

III. ANY PERMIT TERM INCORPORATING A TMDL MUST BE IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW AND POLICIES.

- A. Federal And State Policies Provide For The Use Of Best Management Practices (“BMPs”) In Lieu Of Numeric Water Quality-Based Effluent Limitations, in Stormwater Permits When Enforcing a TMDL Or Otherwise.

As recognized in the Proposed Amendment and Fact Sheet, existing federal law does *not* require that Stormwater dischargers strictly comply with the WLAs set forth in the subject TMDL. Instead they only require compliance with WLAs in accordance with the maximum extent practicable (“MEP”) standard, and importantly, through the use of best management

Mr. Ivar Ridgeway
November 6, 2009
Page 14

practices ("BMPs"). In fact, time and again the Courts, US EPA and the State Board have all recognized that Stormwater discharges are different from traditional point source discharges, and that Stormwater must be analyzed and treated as such in accordance with the requirements of the Clean Water Act.

Both the Proposed Amendment (Proposed Finding 44) and the Fact Sheet (p. 12), reference the Ninth Circuit Court of Appeals' decision in *Defenders of Wildlife v. Browner* ("Defenders") 191 F.3d 1159 (9th Cir. 1999), where there, the Court found that under the CWA municipalities were not required to "strictly" comply with water quality standards. As noted in the Fact Sheet, the *Defenders*' Court specifically granted the permitting agency in that case "discretion either to require 'strict compliance' with water quality standards through the imposition of numeric effluent limitations, or to employ an iterative approach toward compliance with water quality standards, by requiring improved BMPs." (Proposed Fact Sheet, p. 24, emphasis added.)

The *Defenders*' Court specifically recognized the different approach taken by Congress when addressing Stormwater discharges versus industrial discharges, finding that "industrial discharges must comply strictly with state water-quality standards," with Congress choosing "not to include a similar provision for municipal storm-sewer discharges." (*Id* at 1165.) As the *Defenders* Court held, instead, "Congress required municipal storm-sewer dischargers 'to reduce the discharge of pollutants to the maximum extent practicable'" (*Id.*) The Ninth Circuit went on to find, after reviewing the relevant portions of the Clean Water Act, that "because 33 U.S.C. § 1342(p)(3)(B) is not merely silent regarding whether municipal discharges must comply with 33 U.S.C. § 1311," but instead 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 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 in original.)

In *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 874, the Appellate Court held that "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*, emphasis in original, citing 33 USC § 1342 (p)(3)(B)(iii) & *Defenders*, *supra*, 191 F.3d 1159, 1163.)

Mr. Ivar Ridgeway
November 6, 2009
Page 15

With respect to TMDLs specifically, the fact that WLAs within a TMDL are not required under the CWA to be strictly complied within a Stormwater Permit, was confirmed by U.S. EPA itself in a November 22, 2002 EPA Guidance Memorandum on "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." (Exhibit "1" hereto.) In this EPA Guidance Memorandum, EPA explained that for NPDES Permits regulating municipal storm water discharges, any water quality based effluent limit for such discharges should be *"in the form of BMPs and that numeric limits will be used only in rare instances."* (Exhibit "1," p. 6, emphasis added.) EPA recommended that *"for NPDES-regulated municipal . . . dischargers effluent limits should be expressed as best management practices (BMPs), rather than as numeric effluent limits."* (*Id* at p. 4.)

EPA went on to expressly recognize the difficulties in regulating Stormwater discharges, explaining its policy as follows:

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 discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of 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. (EPA Guidance Memo, p. 4.)

As such, because EPA has found, particularly when it comes to the incorporation of a TMDL into a municipal NPDES Permit, "that numeric limits will be used only in rare instances," and because in this case, there is no evidence that this is a "rare instance" that would justify the inclusion of a numeric limit, any incorporation of the Trash TMDL into the subject Municipal NPDES Permit should be limited to the inclusion of MEP-complaint BMPs, and not terms requiring "strict compliance" with numeric effluent limits.

The Cities are aware of recent EPA Region IX comments which appear to seek to undermine EPA's Guidance Memorandum, with Region IX, in part, asserting that EPA Headquarters' Guidance Memorandum is nearly seven years old and that permitting agencies typically do not have the necessary supporting documentation to show that BMPs are expected to be sufficient to implement the WLAs within a TMDL. First, EPA's Official policy, as reflected in its November 22, 2002 Guidance Memorandum, is of greater weight and is taken precedence

Mr. Ivar Ridgeway
November 6, 2009
Page 16

over any informal communications that has been or may be issued by a staff member within a particular Region of EPA. Further, the fact that EPA's Guidance Memorandum was issued seven years ago does not in any way undermine its application to this TMDL, or to any other TMDL incorporation, particularly given that no other official EPA policy has been issued since then, and because neither EPA Region IX, nor any other party has provided any evidence to show that the assumptions and bases for EPA's Guidance Memorandum are no longer valid.

Also, Region IX's assertion that permitting agency often do not have the necessary supporting documentation in the administrative record to show that BMPs will be sufficient to implement the WLA, is not applicable to this Trash TMDL, and beyond that, is a troubling assertion to say the least. For this Trash TMDL, as described above, a series of BMPs have in fact been developed over the years, and the record is replete with evidence showing that these BMPs are believed to be effective. Thus the reason for the Regional Board's determination that such BMPs are deemed compliant full-capture devices. As such, evidence of these deemed compliant BMPs, and others as may be approved in the future, is evidence, in and of itself, within the administrative record, which specifically refutes any attempted assertion by Region IX that the record does not contain sufficient evidence of BMPs that would meet the WLAs.

In addition, Region IX's comment that numeric limits set forth within a TMDL are required to be strictly complied with in an MS4 Permit, where there is no sufficient evidence of BMPs that can achieve the WLAs, is contradictory, and is nothing more than an argument that numeric limits must be strictly complied with because there are *no* BMPs that can be utilized to achieve compliance, *i.e.*, broken down to its essence, Region IX is arguing that strict compliance is required with numeric limits because Cities have no practical means of complying with such numeric limits. The argument contradicts the core of the Maximum Extent Practicable ("MEP") standard set forth under the Clean Water Act, and beyond that, is entirely unsupportable given the requirements of California Law requiring a consideration of the section 13241/13000 factors particularly including whether any such permit terms are "reasonably achievable," as well as being "economically" achievable, and in light of the environmental characteristics of the water body issue.

Moreover, as reflected in a letter dated August 22, 2003 from EPA Headquarters to the Honorable Bart Doyle, EPA Headquarters was very clear that it will "continue to work with the Regional Board to make sure that they consider different implementation methods for TMDLs," and that with respect to EPA's November 22, 2002 Guidance Memorandum, that EPA has "*worked closely with all ten Regions on this memo and expects that it will be followed by the states.*" (Exhibit "13." hereto, p. 2.)

Furthermore, as reflected in Exhibit "14" hereto, the State Board's Water Quality Control Policy for addressing Impaired Waters, dated June 16, 2005, although NPDES Permit terms must be consistent with the assumptions and requirements of a TMDL, State policy provides that

Mr. Ivar Ridgeway
November 6, 2009
Page 17

WLAs in a TMDL are not required to be incorporated verbatim into an MS4 Permit. Instead, State Policy provides that a TMDL "may" be adopted and included in a permit, but may also "be adopted with and reflected in a resolution or order that certifies that" a regulatory program has been adopted and is being implemented by another state, regional, local or federal agency, and that the program will correct the impairment of the water body, or through a resolution or order certifying a non-regulatory program is being implemented by another entity which will correct the impairment.

As such, rather than requiring that the WLAs be strictly enforced as numeric effluent limits in the MS4 Permit, instead, a Memorandum of Agreement or Understanding setting forth a performance-based approach to complying with the WLAs, consistent with the implementation plan and schedule set forth in the TMDL, is a more appropriate means of addressing the WLAs, rather than the Proposed Amendment. A Memorandum of Understanding/Agreement would be preferable because it would provide greater flexibility to the Cities to remove the impairment, rather than being subject to strict numeric limits which, at the end of the day, in fact are not actually achievable, but can only be met through deemed full compliant BMPs. As such, rather than the Proposed Amendment, the Cities' request that the Regional Board consider an alternative, namely entering into a Memorandum of Understanding/Agreement, with the Cities being permitted to develop an iterative BMP approach that allows for further technologies to be developed to address the WLAs.

The Proposed Amendment relies upon language in Order No. 2009-0008 to assert that "in some instances when implementing TMDLs, numeric effluent limitations may be an appropriate means of controlling pollutants in storm water, provided the Regional Board's determination is adequately supported in the permit findings." (Proposed Finding 45.) The problem with this assertion is that there is no indication and no findings to support the claim that the subject TMDL is the "rare instance" referenced by EPA in its Guidance Memo.

Instead, the Proposed Amendment attempts to justify requiring strict compliance with the numeric WLAs based on a disjointed argument that the annual trash discharge amounts meet the definition of an "effluent limitation" under Section 13385.1(c), and that as such the WLAs magically must be strictly complied with when incorporated into an NPDES Permit. Yet, no reasoned or logical reason or "Finding" is provided for requiring strict compliance with the WLAs, and no Findings are contained anywhere in the Proposed Amendment to support the contention that a Trash TMDL is the "rare case" justifying strict compliance with numerics.

In fact, to the contrary, and as EPA recognized in its Guidance Memorandum, because Stormwater discharges are due to storm events that are "highly variable in frequency and duration and are not easily characterized," with trash being primarily mobilized through major storm events, discharges of trash through the MS4 are largely carried by such storm events, and the subject TMDL is anything but the "rare case" where it would be feasible or appropriate to

Mr. Ivar Ridgeway
November 6, 2009
Page 18

establish a numeric limit to include in the subject NPDES Permit. No Findings or other evidence are contained or referenced anywhere in the Proposed Amendment or the Administrative Record to support the contention that this Trash TMDL is the "rare case," and the evidence is to the contrary.

Moreover, the contention in Finding 46 of the Proposed Amendment that because the "Regional Board is not aware of any other mechanisms that would result in actual compliance with the requirements of the TMDL as it was intended," somehow justifies incorporation of the WLAs as strict numeric limits, is frivolous. To begin with, the Regional Board's lack of knowledge is anything but a "Finding" to support the inclusion of strict numeric limits in an NPDES Permit. Second, none of the mechanisms referenced in the Trash TMDL, be it the VSS Units or any of the other deemed full-capture devices, will achieve "actual compliance" with the zero WLA. And that is in fact the point. There is no way to "actually" comply with the WLAs within the TMDL, outside of the use of deemed complaint full-capture BMPs. Thus, the Regional Board's lack of knowledge of any means of achieving "actual compliance" with the TMDL, only goes to prove the inappropriateness of requiring strict compliance with the "zero" WLA. Mandating compliance with a numeric limit that cannot actually be achieved, not only exposes the Cities to inappropriate enforcement actions by the Regional Board, it similarly exposes the Cities to unjustified third-party citizen suits.

In addition, it has long since been the policy of the State of California not to require the use of strict numeric limits to Stormwater dischargers, but rather to apply the MEP standard through an iterative BMP process. (See, e.g., 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 "5"]; State Board Order No. 96-13, p. 6 ["*federal laws does not require* the [San Francisco Reg. Bd] to dictate the specific controls."] [Exhibit "6"]; 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 "7"]; State Board Order No. 2001-11, 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 "8"]; 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 "9"]; State Board Order No. 2006-12, p. 17 ["*Federal regulations do not require numeric effluent limitations for discharges of storm water*"] [Exhibit "10"]; *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.*"] [Exhibit "11"]; and an April 18, 2008 letter from the State Board's Chief Counsel

Mr. Ivar Ridgeway
November 6, 2009
Page 19

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.”*] [Exhibit “12”].)

Furthermore, in the League of California Cities Final Draft Water Policy Guidelines dated October 14, 2009, with respect to MS4 Permits, the League specifically encouraged “the water boards to issue permits *that are reasonably achievable*, based on the unique conditions of a city or region.” The League went on to generally oppose “*legislation that requires the use of numeric limits in waste discharge permits, especially in storm water permits, because of the difficulties in meeting them, the problems with exceeding them, and the cost and potential enforcement impacts.*” (League of California Cities Final Draft Water Policy Guidelines, Exhibit “15,” pp. 8-9.)

In short, neither State or federal law, nor State or federal policy, provide for the incorporation of WLAs as strict numeric limits into an MS4 Permit. In fact, they provide for the contrary, and recognize that numeric limits should only be incorporated into an MS4 Permit in “rare instances,” with the State Board’s Numeric Effluent Limits Panel concluding that “it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers.”

B. Any Attempt To Impose Strict Compliance With WLAs In A Stormwater Permit, Or To Impose Other Requirements That Go Beyond Federal Law Or That Do Not Exist In Federal Law, Require Compliance With Water Code Sections 13241 And 13000.

As explained by the Court of Appeal in *BIA San Diego County v. State Board*, *supra*, 124 Cal.App.4th 866, 874, in the Clean Water Act, Congress distinguished between industrial and storm water discharges and clarified that with respect to municipal storm water discharges, “the EPA has the authority to fashion NPDES Permit requirements to meet storm water quality standards without specific numeric effluent limits” Accordingly, the attempt to impose a permit term that requires strict compliance with the WLAs, *i.e.*, numeric effluent limits, is a requirement that clearly goes beyond what is mandated under federal law. As such, all aspects of State law must be adhered to before any such permit term can be adopted.

Under the California Supreme Court’s holding in *Burbank v. State Board*, *supra*, 35 Cal.4th 613, a regional board must consider the factors set forth in Water Code sections 13000 and 13241 when adopting an NPDES Permit, unless consideration of those factors “would justify including restrictions that do not comply with federal law.” (*Id.* at 627.) According to the Supreme Court in *Burbank*, “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.) In *Burbank*, the California Supreme Court held

Mr. Ivar Ridgeway
November 6, 2009
Page 20

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 the Water Boards must analyze the "*dischargers cost of compliance*." (*Id.* at 618.) The Court specifically interpreted the need to consider "economics" as requiring the 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."].) And according to the California Supreme Court, the goal of the Porter-Cologne Act is 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 Water Code § 13000.)

As such, under the *Burbank* decision, Section 13263 requires a consideration of the factors set forth under Section 13241. Section 13241 then 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 *U.S. v. State Board* (1986) 182 Cal.App.3d 82, the State Board issued revised water quality standards for salinity control because of changed circumstances which revealed new information about the adverse affects of salinity on the Sacramento-San Joaquin Delta ("Delta"). (*Id.* at 115.) In invalidating the revised standards, the Court recognized the importance of complying with the policies and factors set forth under Water Code sections 13000 and 13241, and emphasized section 13241's requirement of an analysis of "economics." The Court also stressed the importance of establishing water quality objectives which are "reasonable," and the need for adopting "reasonable standards consistent with overall State-wide interests":

Mr. Ivar Ridgeway
November 6, 2009
Page 21

In formulating a water quality control plan, the Board is invested with wide authority "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.**" (§ 13000.) In fulfilling its statutory imperative, the Board is **required** to "establish such water quality objectives . . . as in its judgment will ensure the **reasonable protection** of beneficial uses . . ." (§ 13241), a conceptual classification far-reaching in scope. (*Id* at 109-110, emphasis added.)

* * *

The Board's obligation is to attain the highest reasonable water quality "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." (§13000, italics added.) (*Id* at 116.)

* * *

In performing its dual role, including development of water quality objectives, **the Board is directed to consider** not only the availability of unappropriated water (§ 174) **but also all competing demands for water in determining what is a reasonable level** of water quality protection (§ 13000). (*Id* at 118, emph. added.)

Justice Brown in her concurring opinion in *Burbank*, made several significant comments regarding the importance of considering "economics" in particular, and the Water Code section 13241 factors in general, when considering including numeric effluent limitations in an NPDES Permit:

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.

Mr. Ivar Ridgeway
November 6, 2009
Page 22

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.)

The above-referenced statutory, regulatory and case authority all confirm, not only that municipal dischargers are to be treated differently than other industrial dischargers, but also that numeric limits should not be applied to any municipal discharger at this time. "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers." (Numeric Limits Panel Report, Exhibit "9," p. 8.) Accordingly, strict compliance with WLAs in the Trash TMDL or any other TMDL, should not be required at this time, and to the extent a WLA is attempted to be incorporated into a municipal NPDES Permit, and enforced as such and through a means other than through the use of the MEP-complaint BMPs, all applicable requirements of State law, including the analysis required under Water Code Sections 13241/13000, must be met.

With the language in the Proposed Amendment, the Regional Board seems to contend that no section 13241 (and presumably section 13000) analysis is necessary to support the

Mr. Ivar Ridgeway
November 6, 2009
Page 23

inclusion of numeric effluent limits in the subject Permit, because according to the Regional Board, "practicable" options exist to achieve compliance with the effluent limitations. Yet, as referenced above, there are no "practicable" options that have been identified that will achieve "actual compliance" with the numeric effluent limits. To the contrary, all of the "practicable" options are "deemed" compliant full-capture devices, and no "Finding" or evidence exists to support any Finding that "actual compliance" could ever reasonably be achieved.

Moreover, the CWA plainly does not require the inclusion of "numeric effluent limits" in a Stormwater NPDES Permit, and clearly does not require "strict compliance" with any such limits or with any "water quality standards." Accordingly, a Permit term that requires strict compliance with numeric effluent limits is a Permit term that, on its face, goes beyond the requirements of the Clean Water Act. As such, whether the deemed-compliant measures to meet these strict numeric limits are "practicable" is not the relevant issue. Instead, the issue, given that numeric limits clearly are not required under federal law, is whether the Regional Board has complied with the requirements of the Porter-Cologne Act before adopting the Proposed Amendment, *i.e.*, conducted the analysis required under sections 13263, 13241 and 13000. Yet, as reflected in the Proposed Amendment itself, no such section 13241/13000 analysis has been conducted, with the Regional Board wrongly concluding that no such analysis is "necessary to support these effluent limitations." (Proposed Amendment, Finding 52.)

With the adoption of sections 13263 and 13241, the California Legislature clearly required the Regional Board to conduct an analysis of whether the Proposed Permit terms in issue are "reasonably achievable," as well as an analysis of their "economic" impacts, and to consider the "environmental characteristics" of the water body in issue before imposing any such Permit terms. In this case, the draft findings in the Proposed Permit confirm that the Regional Board has not conducted this legally required analysis. Nor is there any evidence in the record that such an analysis has ever been conducted to date, and it would be contrary to law for the Boards to rely upon any prior analysis conducted with respect to the Trash TMDL, particularly in light of the fact that when the Trash TMDL was adopted, the Boards did not indicate with any certainty that "strict compliance" with the WLAs in the TMDL would be required, as it is now attempting to require.

Moreover, the initial Trash TMDL was adopted in 2001, with the Regional Board at that time providing the Cities with a twelve year implementation period, *i.e.*, two years of monitoring and investigation, followed by ten, ten percent (10%) annual reductions in the amount of trash allowed to be discharged to the Los Angeles River. Now, however, with the attempted incorporation of the WLAs into the MS4 Permit in 2009, some eight years later, the starting point for reductions in trash are 50%, rather than 10% after three years, as was the case in 2001, meaning that a much more significant effort, with accelerated capital and implementation costs, must be undertaken to install the various full-capture devices in issue.

Mr. Ivar Ridgeway
November 6, 2009
Page 24

Yet, no analysis has been performed on whether such an expedited implementation schedule "could reasonably be achieved" in the necessary time frame, nor has any analysis been performed on the costs of installing and maintaining these deemed-compliant structural BMPs on an expedited basis. For example, in utilizing a recent State Grant provided to the Gateway Cities for purposes of complying with the TMDL, in order to meet the 60% WLA as of September 30, 2010, it is estimated that thousands of catch basin inserts will need to be installed, *i.e.*, several thousand catch basin inserts will need to be installed over the course of the next 10 months for the Gateway Cities alone. Whether the market can even manufacture a sufficient number of catch basins in time, let alone the significant capital cost that must be undertaken to install these catch basins, as well as the cost to purchase or install catch basin inserts throughout other parts of the Region to comply with the 60% requirement by the end of next September, has not been shown, and nor is there any evidence in the record to indicate that such is in fact "reasonably achievable". Beyond this, the experience to date by the Cities has shown that for those catch basin inserts that have been installed, the actual cost to maintain such devices is excessive, as is the repair cost, and there has been no analysis by the Regional Board of the overall cost to continue to maintain, repair and subsequently replace such devices, consistent with the requirements of sections 13241/13000.

The Regional Board has failed to comply with the clear requirements of Water Code sections 13263, 13241 and 13000, even though it is admittedly requiring strict compliance with numeric limits, *i.e.*, the WLAs in the Trash TMDL.

C. With The Proposed Permit Terms, The Regional Board is Arbitrarily Attempting To Redefine "Stormwater" To Exclude "Urban Runoff"

Part 5 of the Proposed Amendment arbitrarily includes a new definition for the term "Drainage," where it defines such term as meaning "all drainage into the MS4, including urban runoff (non-stormwater) and stormwater." In addition, page 11 of the Fact Sheet misrepresents the application of the MEP standard to Municipal Stormwater Permits, by asserting that the language of the CWA requires Municipal Stormwater Permits to include "controls to reduce the discharge of pollutants from *storm water* to the maximum extent practicable," citing to section 402(p)(3)(B) of the CWA. As discussed below, these terms of the Proposed Amendment and such contentions in the Fact Sheet, are in error, in light of the fact that the definition of "storm water" under the federal regulations specifically includes "storm water runoff, snow melt runoff, and surface runoff and drainage" (40 CFR § 122.26(b)(13)), and given that the actual language of the CWA provides for the application of the MEP standard to all "pollutants" from the MS4, not just to pollutants "from storm water" from the MS4.

The Regional Board's attempt, with the Proposed Amendment, to redefine Stormwater to exclude "urban runoff," plainly has it backwards, as the federal regulations expressly define "storm water" as including not only storm water runoff and snow melt runoff but also "surface

Mr. Ivar Ridgeway
November 6, 2009
Page 25

runoff and drainage.” (40 CFR § 122.26(b)(13).) Thus, the definition of the term “Drainage” in the Proposed Amendment is directly contrary to the express definition of “storm water” in the federal regulations, and in fact inverts the definition of the term “storm water,” apparently with the goal of recasting the language of the CWA to avoid applying the MEP standard to *all* discharges from the MS4. The proposed definition of “Drainage” is arbitrary and contrary to law.

Redefining the term “storm water” to exclude “urban runoff” is an apparent attempt to read the terms “surface runoff” and “drainage” out of the federal regulation in 40 CFR § 122.26(b)(13). Such an interpretation is contrary to the plain language of the regulation and applicable 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 “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,

Mr. Ivar Ridgeway
November 6, 2009
Page 26

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 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 that: "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 discussed above, 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:

Mr. Ivar Ridgeway
November 6, 2009
Page 27

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* 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*."]; 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 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."].)

Third, in the *Arcadia* Case, in its Decision, Judgment and Writ of Mandate, the Superior Court found that the term "stormwater" was defined in the federal regulations to include not only "stormwater" but also "urban runoff." (*See*, Decision, Exhibit "3," p. 1 ["... the Standards apply to storm water [*i.e.*, storm water and urban runoff]."]; *also see* the Judgment in the *Arcadia* Case, p. 2, fn 2 [citing to 40 C.F.R. § 122.26(b)(13)], where the Superior Court found that: "Federal law defines 'storm water' to include urban runoff, *i.e.*, 'surface runoff and drainage'"]; and the Writ of Mandate in the *Arcadia* Case, p. 2, n. 2, where the Superior Court similarly again concluded that: "Federal law defines 'storm water' to include urban runoff, *i.e.*, 'surface runoff and drainage.'")

It is further important to note that this interpretation of the term "stormwater" as including "urban runoff," by the Superior Court in the *Arcadia* Case, has *not* been challenged on appeal by the State or Los Angeles Regional Boards, and in fact, has been agreed to by both of these Boards, as well as by the Intervenor environmental organizations. 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:

Mr. Ivar Ridgeway
November 6, 2009
Page 28

“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 “4” hereto, Appellant Boards’ Opening Brief, p. 9, n. 5.)

Thus, both the State and the Los Angeles Regional Boards have acknowledged that the term “stormwater” includes not only “stormwater” runoff from “rain events,” but also other discharges from a storm sewer conveyance system, specifically including “urban runoff.” (*Id.*) This definition of the term “Stormwater” as including “urban runoff,” has also been accepted by the NRDC, the Santa Monica Baykeeper, and Heal the Bay (collectively, “Intervenors”). In the Intervenor’s Opening Brief in the *Arcadia* Case, said Intervenors admit 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 “4.” Intervenors’ Opening Appellate Brief, p. 6, n. 3.)

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 findings of the Superior Court in the *Arcadia* Case, as well as the admissions by the State and Regional Boards and the Intervenors in that case, it is clear that the term “storm water” as defined in the federal regulations, includes “urban runoff.”

In addition, a review of the language of the Clean Water Act clearly shows that municipalities are only required to “reduce the discharge of *pollutants* to the maximum extent practicable.” (33 USC § 1342(p)(3)(B)(iii).) The CWA requires that the MEP standard be applied to the “discharge of pollutants” from the MS4, and not to the “discharge of pollutants from *storm water*” from the MS4, as suggested in the Fact Sheet to the Proposed Amendment. Accordingly, the Regional Boards attempted limitation of the application of the MEP standard only to pollutants in “storm water,” and the apparent desire to then apply a heightened standard beyond the “MEP” Standard for non-precipitation events, is simply unsupported by the plain language of the CWA.

Section 1342(p)(3)(B) of the Act entitled “Municipal Discharge” provides, in its entirety, as follows:

Mr. Ivar Ridgeway
November 6, 2009
Page 29

Permits for discharges from municipal storm sewers –

- (i) may be issued on a system- or jurisdictional- 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), emphasis added.)

This language in the CWA has consistently been interpreted as requiring an application of the MEP standard to all 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.)

Similarly, in *Building Industry Association of San Diego County v. State Water Resources Control Board* (“*BIA*”) (2004) 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

Mr. Ivar Ridgeway
November 6, 2009
Page 30

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.)

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 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. (State Board Order No. 91-04, p. 16-17, *emph. added.*)

This State Board Order, and others as discussed below, 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 imposed upon the municipalities between stormwater and non-stormwater, involves the need for municipalities to "effectively prohibit non-stormwater discharges into the" MS4.

Mr. Ivar Ridgeway
November 6, 2009
Page 31

In sum, the Regional Boards attempt to back in a definition of the term "storm water" to exclude "urban runoff," through a new definition of the term "Drainage," is directly contradicted by the plain language of the CWA. In addition, this attempted redefinition of the term "storm water" to exclude "urban runoff," combined with the misrepresentation of the language in the CWA that the MEP standard is limited to the discharge of pollutants from "storm water," appears to be an attempt to justify imposing a strict numeric effluent limitation as the means of incorporating WLAs from the subject TMDL and future TMDLs into the Permit. Such action is contrary to law and constitutes an abuse of discretion.

D. Any Additional Monitoring Or Required Investigation Into Water Quality Would Trigger The Need For A Cost-Benefit Analysis Pursuant To Water Code Sections 13225 And 13267.

The Proposed Amendment also includes a series of "monitoring and reporting requirements" as a part of the incorporation of the subject Trash TMDL, which if not complied with, would subject the Permittees to various penalties and enforcement action under the PCA. Yet, before incorporating any of the "monitoring and reporting requirements" set forth in the Proposed Amendment, the Regional Board must first conduct a cost-benefit analysis, in accordance with Water Code sections 13225(c) and 13267. That is, to the extent the Regional Board seeks to require a city to investigate and report on technical factors involved in water quality control, or to require a city to implement additional monitoring requirements, a cost-benefit analysis must be performed beforehand to justify the inclusion of any such additional reporting and monitoring requirement.

Under these Water Code sections, where any investigation, monitoring or reporting requirements are imposed upon a city, the Regional Board is required to consider the burdens of conducting the analysis, and preparing the monitoring reports, and may only require such reporting and monitoring, where "the burden, including costs, of such reports" bears "a reasonable relationship to the need for the report and the benefits to be obtained from the reports." (§§ 13267 & 13225(c).) Moreover, under section 13267 specifically, where such an investigation or reports are required, "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.)

Likewise, under Water Code section 13225(c), a regional board only has the authority to "require as necessary any state or local agency to investigate and report on any technical factors involved in water quality 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); *also see* § 13165 placing an identical obligation on the State Board.)

Mr. Ivar Ridgeway
November 6, 2009
Page 32

Accordingly, the "Monitoring and Reporting Requirements" in the Proposed Amendment to the Permit, may only lawfully be imposed upon the Cities after a cost-benefit analysis, showing that the costs do not exceed the benefits of such requirements, has been conducted. There are no findings and no evidence to support any such findings, that the required cost benefit analysis compelled by sections 13267 and 13225, has been conducted. Until the requisite cost benefit analysis and the other requirements of section 13267 have been met, the Proposed Amendment cannot lawfully be adopted.

E. Any Added Mandates On The Cities With New Permit Terms That Are Not Mandated By Federal Law, Must Be Funded In Accordance With The California Constitution.

The admitted attempt, with the Proposed Amendment, to require "strict" compliance with the WLAs in the current Trash TMDL, is a requirement that admittedly goes beyond what is required under federal law. Similarly, nothing under federal law requires that the municipalities install and maintain trash receptacles at all transit stops within their respective jurisdictions, and the continued requirement in the Proposed Amendment on the Cities to do so is a second aspect of the Proposed Amendment that goes beyond what is required by the Clean Water Act. Accordingly, forcing Cities to strictly comply with numeric limits, or to carry out other requirements such as installing and maintaining trash receptacles at transit stops, are non-federally mandated requirements that may only be imposed where funds have first been provided as required by the California Constitution.

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.*) The incorporation of new permit requirements that are not mandated by federal law, and that go unfunded by the State, would violate Article XIII B, Section 6 of the California Constitution. (*See County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 914 ["We are not convinced that the obligations imposed

Mr. Ivar Ridgeway
November 6, 2009
Page 33

by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances.”].)

In this case, as discussed above, the requirement to install and maintain trash receptacles at all transit stops within the respective jurisdictions of the Cities has already been found by the Commission on State mandates to be a mandate that is not compelled by the Clean Water Act, and to be a mandate that must be funded by the State of California. (See Exhibit “2” p. 1-2.) Particularly now, continuing to impose such a requirement, while at the same time maintaining the other requirements on the Cities to strictly comply with the WLAs in the Trash TMDL, appears to be an attempt to impose an unnecessary mandate, but nonetheless, is an expense that the State of California will be required to assume responsibility for, along with the cost to comply with the additional non-federal mandate of strictly complying with the numeric WLAs.

IV. CONCLUSION.

For the foregoing reasons, the Cities respectfully request that the Proposed Amendment not be adopted at this time, and that instead the Regional Board revise the NPDES Permit in issue as a part of the Permit renewal process in response to the ROWDs submitted to the Regional Board some 3½ years ago, and then only after the *Arcadia* Case has been finally concluded. In addition, at the appropriate time that the Trash TMDL is to be incorporated into the renewed NPDES Permits, the incorporation must be accomplished consistent not only with the “assumptions and requirements of any available waste load allocation,” but also consistent with the assumptions and requirements of applicable State law. The Cities hope that yet further litigation over the Trash TMDL can be avoided, and that the Regional Board will act responsibly and in accordance with law before amending the existing NPDES Permit to incorporate its terms.

Sincerely,

RUTAN & TUCKER, LLP



Richard Montevideo

Enclosures
RM:jlk

Tahir

From: Ivar Ridgeway
To: la_trash
Date: 11/9/2009 11:55 AM
Subject: Fwd: LA River Trash TMDL Comments
Place: la_trash
Attachments: Mr.%20Ridgeway%20Ltr[1].pdf

>>> <rtahir@tecsenv.com> 11/9/2009 11:53 AM >>>
Hi Ivar,

The cities of San Gabriel, San Marino, Duarte, Irwindale, and South El Monte incorporate by reference comments prepared by Richard Montevideo of Rutan and Tucker (see attached) in re: the proposed reopener of the current MS4 permit to admit the trash TMDL for the Los Angeles River.

As you know I represent these cities on stormwater matters and am authorized to comment on their behalf.

Thanks Ivar,

Ray Tahir

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Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
 Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit

| |
|---|
| 1. County of Los Angeles, Department of Public Works |
| 2. City of Arcadia |
| 3. City of Artesia |
| 4. City of Bellflower |
| 5. City of Bell Gardens |
| 6. City of Carson |
| 7. City of Claremont |
| 8. City of Commerce |
| 9. City of Downey |
| 10. City of Duarte |
| 11. City of Gardena |
| 12. City of Inglewood |
| 13. City of La Canada Flintridge |
| 14. City of Monrovia |
| 15. City of Pico Rivera |
| 16. City of Rosemead |
| 17. City of San Gabriel |
| 18. City of Signal Hill |
| 19. City of West Covina |
| 20. City of Vernon |
| 21. City of Whittier |
| 22. Los Angeles Stormwater Quality Partnership ¹ |
| 23. Heal the Bay |
| 24. Santa Monica Baykeeper |
| 25. Charles Abbott Associates, Inc. |

¹ Partner cities include Agoura Hills, Azusa, Beverly Hills, Calabasas, Hidden Hills, Monrovia, Norwalk, Rancho Palos Verdes, and Westlake Village.

Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit

- 26. Richards, Watson, Gershon, Attorneys at Law²
- 27. Rutan, Attorney at Law³

| No. | Author | Date | Comment | Response |
|-----|---|----------|---|--|
| 1.1 | County of Los Angeles, Department of Public Works | 8/3/2009 | LA River TMDL provisions should not be incorporated into the LA MS4 Permit until it's reissued. | TMDLs are not self-executing. In order to implement and enforce the requirements of the TMDL, the wasteload allocations (WLAs) and load allocations (LAs) established in a TMDL and assigned to each point source and nonpoint source, respectively, must be incorporated into the appropriate regulatory mechanism for the specific dischargers. In this case, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the WLAs will be the Los Angeles County MS4 Permit (Basin Plan Table 7-2.1). Therefore, reopening the permit at this time is necessary given that compliance with the interim WLAs, established in the Los Angeles River Watershed Trash TMDL and assigned to the Los Angeles County MS4 Permittees within the Los Angeles River Watershed, was required beginning in 2008. |

² Representing the Cities of Monrovia, San Fernando, San Marino, and South El Monte.

³ Submitted on behalf of the Cities of Downey and Signal Hill and the ad hoc group, Coalition for Practical Regulation. CPR consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|---|----------|---|---|
| 1.2 | County of Los Angeles, Department of Public Works | 8/3/2009 | LA River TMDL should be incorporated through reference to BMPs specifically compliance through installation of the full-capture system. | <p>The Los Angeles River Watershed Trash TMDL and the proposed permit provisions allow Permittees the option of demonstrating compliance with the interim and final WLAs established in the TMDL and the associated, proposed effluent limitations derived from these WLAs through the installation and ongoing maintenance of certain types of BMPs, i.e. certified full capture systems. See Finding 49 and proposed permit provisions in Part 7.1.B (1) (a), subparagraphs (2) and (3).</p> <p>However, certified full capture systems are not the sole means by which compliance with the wasteload allocations and the associated, proposed effluent limitations may be achieved. The TMDL and proposed permit provisions allow Permittees the option of applying partial capture devices and institutional controls to attain compliance. The nature of these applications is entirely at the discretion of the Permittees as long as they can satisfactorily demonstrate compliance with the effluent limitations as outlined in Part 7.1.B (1) (b), and (c).</p> <p>Should the proposed permit provisions incorporate the WLAs established in the TMDL only through reference to certified full capture systems, Permittees would be denied the option of applying other measures to achieve compliance with the TMDL WLAs and the associated, proposed effluent limitations.</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|-----------------|-----------|--|--|
| 2.1 | City of Arcadia | 7/22/2009 | The Regional Board should use a more collaborative approach with cities to implement TMDL provisions instead of inserting the TMDL and its numerical limit into the LA MS4 Permit. | Federal regulations require that NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation (40 CFR 122.44(d)). Additionally, NPDES permits must contain provisions consistent with the State Water Quality Management Plan (Cal. Wat. Code § 13263). TMDLs are adopted by the Regional Board as amendments to the Regional Water Quality Control Plan (Basin Plan), which is a part of the State Water Quality Management Plan. Therefore, according to both federal and state law, the Regional Board is obligated to incorporate the provisions and requirements of the TMDL into the permit. |
| 2.2 | City of Arcadia | 7/22/2009 | The Regional Board should consider the cost associated with the LA River Trash TMDL. | The Regional Board considered the cost of implementing the LA River Trash TMDL during the development of the TMDL to the extent required by state law, in accordance with provisions of CEQA. See LA River Trash TMDL Staff Report (pp. 36-42) and Board Resolution R07-012. Furthermore, the Court of Appeal ruled that the Water Boards sufficiently complied with the economic considerations per Cal. Wat. Code § 13241. The TMDL discusses costs of collecting and disposing of trash, costs of various types of compliance measures, and a cost comparison of capital and operating and maintenance costs. |
| 3.1 | City of Artesia | 7/21/2009 | Nothing in 40 CFR Section 122.44(d)(4)(vii)B requires the incorporation of waste load allocations as effluent limits in any municipal NPDES Permit. | 40 CFR 122.44(d) requires that NPDES permits must be consistent with the assumptions and requirements |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|-----------------|-----------|--|--|
| 3.2 | City of Artesia | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | <p>of any available wasteload allocation. The proposed permit provisions provide for alternative means of demonstrating compliance with the effluent limitations that are derived from the WLAs, including: (1) a BMP-based approach whereby BMPs meeting the performance standard of "full capture" may be properly installed and maintained on an ongoing basis to demonstrate compliance with the WLAs and (2) a numeric effluent limitation based approach whereby "partial capture" BMPs and institutional controls not meeting the performance standard of "full capture" may be implemented, in which case compliance with the effluent limitations is demonstrated by measuring actual reductions in trash discharges in a drainage area. This approach is also consistent with State Board Orders, including Order WQ 2009-008, in which the State Board concluded that the Regional Boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of either numeric or non-numeric effluent limitations.</p> |
| | | | | <p>The regulation on which the proposed permit provisions are based – the Los Angeles River Watershed Trash TMDL – underwent an extensive public process during its initial adoption in 2001, and its re-adoption in 2007. During TMDL adoption, the Regional Board considered a variety of alternatives and found that the TMDL as adopted is reasonable. See Regional</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------------------|-----------|---|---|
| 3.3 | City of Artesia | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | Board Resolution R07-012. Furthermore, as evidenced by their approvals, the State Board and US EPA found the TMDL as adopted to be reasonable as have the courts. The TMDL is not at issue in the proposed re-opening of the permit. See Response to 1.2 |
| 3.4 | City of Artesia | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | 40 CFR 122.44(d) requires that NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation. Failing to incorporate the WLAs into the permit in favor of memoranda of agreements would be contrary to the federal regulations. See also Response to 2.1 |
| 4.1 | City of Bellflower | 7/22/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 2.1. First, the iterative process was not intended to be a process in which there was no timeframe for achieving water quality standards. The permit requires timely progress toward achieving the Receiving Water Limitations identified in Part 2.1 (i.e. water quality standards). ⁴ The Trash TMDL's 8-year implementation schedule requiring progressive (i.e. iterative) reductions towards the final WLAs is consistent with the iterative approach to implement timely controls to achieve water quality standards. Nineteen years have passed since |

⁴ "The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges." (Order 01-182 as amended, p. 23).

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>adoption of the first MS4 permit for Los Angeles County, while eight years have passed since adoption of the current MS4 permit. There has been ample time for Permittees to implement the provisions of the permit to control trash discharges to the Los Angeles River system and to apply the iterative approach set forth in the Part I.B. of the 2001 Permit in order to address the trash impairments in the Los Angeles River Watershed. Yet, water quality impairments due to trash discharges from the MS4 to the Los Angeles River and its tributaries remain a serious public health and environmental problem.</p> <p>Second, over the last 19 years, much has been learned about the nature of urban runoff and stormwater and BMP performance, both nationally and regionally. During the early years of the stormwater regulatory program, the State Board recognized that a prudent approach was one that implemented BMPs to reduce sources and control pollutants from the MS4 and continued to collect monitoring data on the characteristics of urban runoff and stormwater (Order WQ 91-03). However, with extensive data on the characteristics of stormwater and BMP performance, numeric effluent limitations for discharges of trash have</p> |

⁵ For example, installation of certified full capture BMPs in forty percent of a responsible jurisdiction's drainage area translates to a forty-percent reduction in the pre-assigned baseline waste load allocations. Since the wasteload allocations are assigned as percent reductions, they can be directly translated from BMP implementation.

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------------------|-----------|---|---|
| | | | | <p>become feasible since it is possible to determine a BMP equivalent of the numeric target.⁵</p> <p>Additionally, the Trash TMDL addresses the uncertainty associated with annual variability in trash discharge amounts through the use of three-year rolling averages of the assigned wasteload allocations, to determine compliance points (effluent limitations).</p> <p>As a result of these considerations and according to federal and state law, Regional Board staff concludes that it is necessary and feasible to include the interim and final WLAs contained in the Los Angeles River Watershed Trash TMDL into the permit as numeric effluent limitations to ensure timely and measurable reductions in trash discharges to eliminate the existing water quality impairment. This is consistent with the recent State Board Order that concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based 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).</p> |
| 4.2 | City of Bellflower | 7/22/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 4.3 | City of Bellflower | 7/22/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 4.4 | City of Bellflower | 7/22/2009 | TMDLs should be implemented through memoranda of | See Response to 3.5 |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|----------------------|-----------|--|--|
| 5.1 | City of Bell Gardens | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 5.2 | City of Bell Gardens | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 5.3 | City of Bell Gardens | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 5.4 | City of Bell Gardens | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 6.1 | City of Carson | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 6.2 | City of Carson | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 6.3 | City of Carson | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 6.4 | City of Carson | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 7.1 | City of Claremont | 7/24/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of Claremont's understanding is the State is obligated to reissue permits on a 5 year cycle. | While the expiration date of the permit was December 12, 2006, per federal and state regulation, the "terms and conditions" of the permit are administratively extended. Those terms and conditions include the reopeners identified in Part 6.I. The provisions of federal and state regulation recognize and provide for the fact that the permitting authority may not be able to reissue permits immediately upon expiration (23 Cal. Code Reg. 2235.4 and 40 CFR 122.41(f) and 122.62). That is the case with the Los Angeles County MS4 permit. |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>The Los Angeles River Watershed Trash TMDL is a regulation adopted by the Regional Board, and compliance with certain provisions of the TMDL, including WLAs, is required prior to the time that the LA County MS4 permit can be reissued. The only way to ensure compliance is to incorporate the relevant provisions into the MS4 permit. Moreover, federal regulations require that NPDES permits incorporate provisions consistent with the assumptions and requirements of available wasteload allocations. While reissuing the permit would be preferable, it cannot be accomplished in time to ensure compliance with interim WLAs established in the TMDL. Accordingly, reopening the permit is the only option that would timely implement federal regulations, and the Regional Board's regulations (the TMDLs).</p> <p>To fulfill the purposes of the Clean Water Act, the regulations authorize an agency to modify a permit at an interim time if certain circumstances, applicable here, exist. These include implementing newly adopted basin plan provisions (including TMDLs). 40 CFR 122.62 discusses the circumstances under which a permit may be reopened. Notably, the permit contains a specific reopener to incorporate modifications to the basin plan. Since the proposed modification is based upon a reopener provided in the permit, either subdivision (a)(7) or (a)(3) provides</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|-------------------|-----------|---|--|
| 7.2 | City of Claremont | 7/24/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | <p>authority for the modification.</p> <p>Reopening the permit at this time is wholly appropriate given that compliance with interim WLAs of the TMDL was required beginning in September 2008. All Permittees under the LA County MS4 Permit have been on notice since 2001 that the Fact Sheet of the Los Angeles County MS4 Permit anticipated the incorporation of TMDLs. Additionally, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the TMDL will be through the MS4 Permit (Basin Plan Table 7-2.1).</p> |
| 7.3 | City of Claremont | 7/24/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | <p>Comment noted. Regional Board staff intends to begin the process of reissuing the LA County MS4 Permit in 2010.</p> <p>See Response to 1.1</p> |
| 7.4 | City of Claremont | 7/24/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | <p>See Response to 1.1</p> |
| 7.5 | City of Claremont | 7/24/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | <p>The TMDL program, at the national and state level, is critical to achieving the ultimate goal of the federal Clean Water Act set forth in section 101(a). With 189 waterbodies and 822 individual listings of water quality impairment on the section 303(d) list for the Los Angeles Region alone, TMDLs are essential to set forth a plan and schedule for remedying impairments in these waterbodies and restoring full support for the beneficial uses of these waterbodies.</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|-------------------|-----------|---|--|
| 7.6 | City of Claremont | 7/24/2009 | | TMDLs are required by the CWA section 303(d). Federal and state law also requires that TMDLs are incorporated into permits. See Response to 2.1. Furthermore, TMDL development in the Los Angeles Region is ordered under a court-established Consent Decree. The Los Angeles River Watershed Trash TMDL was one of 92 TMDLs required under the Consent Decree. See Responses to 1.2, 2.1 and 7.1 |
| 8.1 | City of Commerce | 7/23/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Response to 7.1 |
| 8.2 | City of Commerce | 7/23/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |
| 8.3 | City of Commerce | 7/23/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 8.4 | City of Commerce | 7/23/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 8.5 | City of Commerce | 7/23/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |
| 8.6 | City of Commerce | 7/23/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Response to 7.6 |
| 9.1 | City of Downey | 7/21/2009 | Applying strict numeric limits to the iterative process | See Response to 4.1 |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|----------------|-----------|--|---|
| 9.2 | City of Downey | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 9.3 | City of Downey | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 9.4 | City of Downey | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 9.5 | City of Downey | 7/28/2009 | By modifying the expired permit before LA County's catch basin policy, the Regional Board is forcing cities to install BMPs under unfavorable existing County policies or face potential MS4 Permit Enforcement. Alternatively, the modification could delay enforcement until after the LA County revision. | The commenter does not specify how the Permittees' ability to comply with the proposed provisions will be affected by the District's catch basin policy. The County has informed Regional Board staff that it does not intend to prevent Permittees' installation of BMPs that do not conflict with the District's mission of flood protection. |
| 9.6 | City of Downey | 7/28/2009 | After Permit expiration, permit modification requires adoption a new Permit. | See also Response to 7.1 See Response to 7.1 |
| 9.7 | City of Downey | 7/28/2009 | The Regional Board should consider more resource sensitive and collaborative approaches to implementing the TMDL. | See Response to 2.1 |
| 9.8 | City of Downey | 7/28/2009 | There is no State Authority requiring incorporation of numeric effluent limits in MS4 Permits. | Cal. Water Code section 13263 requires that NPDES permits contain provisions consistent with the State Water Quality Management Plan. TMDLs are adopted by the Regional Board as amendments to the Regional Water Quality Control Plan (Basin Plan), which is a part of the State Water Quality Management Plan. Therefore, according to state law, the Regional Board is obligated to incorporate the provisions and requirements of the TMDL into the permit. Additionally, the State Board recently stated, "It is our intent that |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|----------------|-----------|---|---|
| 9.9 | City of Downey | 7/28/2009 | The efficacy of trash control BMPs does not warrant a zero discharge standard (trash retention technologies are still maturing). | <p>federally mandated TMDLs be given substantive effect ... Doing so can improve the efficacy of California's NPDES storm water permits." The State Board concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based 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).</p> <p>The "full-capture" concept is a means of translating the zero discharge requirement into a BMP standard (i.e. technology equivalent) that would provide assurance that compliance with the zero numeric target could be reasonably achieved.</p> <p>"Full-capture" status is assigned to currently certified BMPs that meet the specified performance standard. This does not preclude the consideration of higher-performance BMPs as "full-capture" as they become available.</p> |
| 9.10 | City of Downey | 7/28/2009 | The trash TMDL could be incorporated into the next MS4 Permit by referencing the need to utilize MEP-compliant BMPs to achieve the WLA. Implementation measures and schedules could then be developed through a memorandum of agreement between the Regional Board and the individual cities. | <p>See Responses to 1.2 and 3.5</p> <p>Furthermore, the proposed permit provisions do allow Permittees to install and maintain certified full capture systems, which are deemed compliant, to achieve the WLAs.</p> <p>The Regional Board is required to establish effective permit limitations to</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|-----------------|-----------|--|--|
| 10.1 | City of Duarte | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | comply with water quality standards. 40 CFR §122.44(d)(1)(i) states, "Limitations <i>must</i> control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above <i>any</i> State water quality standard, including State narrative criteria for water quality." See Response to 4.1 |
| 10.2 | City of Duarte | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 10.3 | City of Duarte | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 10.4 | City of Duarte | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 11.1 | City of Gardena | 7/27/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of Gardena's understanding is the State is obligated to reissue permits on a 5 year cycle. | See Response to 7.1 |
| 11.2 | City of Gardena | 7/27/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |
| 11.3 | City of Gardena | 7/27/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 11.4 | City of Gardena | 7/27/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 11.5 | City of Gardena | 7/27/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|------------------------------|-----------|--|--|
| 12.1 | City of Inglewood | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 12.2 | City of Inglewood | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 12.3 | City of Inglewood | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 12.4 | City of Inglewood | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 13.1 | City of La Canada Flintridge | 7/28/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 13.2 | City of La Canada Flintridge | 7/28/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 13.3 | City of La Canada Flintridge | 7/28/2009 | The Regional Board should use BMPs in the NPDES Permit instead of placing the TMDL into the permit. | See Response to 1.2 |
| 13.4 | City of La Canada Flintridge | 7/28/2009 | The Trash TMDL should be implemented through memoranda of agreements. | See Response to 3.5 |
| 14.1 | City of Monrovia | 7/28/2009 | The Regional Board should follow USEPA guidance for incorporating TMDLs into NPDES storm water permits (the USEPA strongly encourages storm water permit writers to address the regulations consistency requirement through the use of an iterative BMP approach). | See Responses to 1.2, 2.1 and 4.1 US EPA's guidance, as outlined in its November 22, 2002 memorandum, begins by reiterating the requirement set forth in federal regulation that, "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs" (40 CFR 122.44(d)(1)(vii)(B)). Nothing in EPA's 2002 memorandum substitutes for those legally binding requirements. Wasteload allocations must be set to achieve water quality standards in the receiving water (see Clean Water Act |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|--|
| | | | | <p>303(d)(1)(C)).</p> <p>EPA goes on to say that, "WQBELs [water quality-based effluent limitations] for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances." If effluent limitations are expressed as BMPs, there must be a reasonable expectation that the BMP(s) can achieve the wasteload allocation. The installation and maintenance of certified full capture systems is an available option for Permittees to demonstrate compliance because it satisfies that reasonable expectation.</p> <p>The Los Angeles River Watershed Trash TMDL and the proposed permit provisions allow Permittees the option of demonstrating compliance through a BMP-based approach, i.e. the progressive (i.e. iterative) installation of certified full capture systems, which have been determined in the TMDL and proposed permit provisions to perform to a standard sufficient to fully achieve the WLAs in the TMDL.</p> <p>However, the trash TMDL and the proposed permit provisions provide a variety of means to comply, including certified full capture systems, partial capture devices, and institutional controls. Unlike certified full capture systems, partial capture installations and institutional controls may not be</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>sufficient to implement the final WLAs in the TMDL; therefore, per EPA's 2002 memorandum, it is necessary to include numeric effluent limitations and monitoring necessary to determine compliance.</p> <p>Furthermore, the trash TMDL is a case in which numeric effluent limitations are feasible and appropriate. While EPA recognized that high variability in storm events and minimal available data has generally resulted in difficulty characterizing pollutant loads in stormwater discharges from individual dischargers or groups of dischargers, this has been addressed in the trash TMDL. As part of the TMDL implementation, extensive monitoring was conducted early on to determine the baseline levels of trash discharges from each Permittee's jurisdictional area within the watershed. The TMDL and WLAs were revised to reflect the baseline trash discharges by jurisdiction determined from the two-year baseline monitoring. Additionally, a practical method for measuring annual trash discharges (i.e. Annual Storm Event Discharge calculations based on a Daily Generation Rate (DGR)) was developed to track reductions in trash discharges from the baseline.</p> <p>In sum, the proposed permit provisions, which incorporate the requirements of the WLAs in the TMDL as numeric effluent limitations, while providing a BMP-based option for compliance</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|---------------------|-----------|--|--|
| 14.1 | City of Monrovia | 7/28/2009 | The Regional Board should build on prior work conducted in response to the LA River Trash TMDL and design the new permit provision on an iterative BMP approach. | through progressive installation of certified full capture systems, is fully consistent with EPA's policy memorandum dated November 22, 2002. |
| 15.1 | City of Pico Rivera | 7/28/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Responses to 1.2, 2.1 and 4.1 The Regional Board is required to establish effective permit limitations to comply with water quality standards. See Response to 4.1 |
| 15.2 | City of Pico Rivera | 7/28/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 15.3 | City of Pico Rivera | 7/28/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 15.4 | City of Pico Rivera | 7/28/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 16.1 | City of Rosemead | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 16.2 | City of Rosemead | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 16.3 | City of Rosemead | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 16.4 | City of Rosemead | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 17.1 | City of San Gabriel | 7/27/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of San Gabriel's understanding is the State is obligated to reissue permits on a 5 year cycle. | See Response to 7.1 |
| 17.2 | City of San Gabriel | 7/27/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|---------------------|-----------------------|---|------------------------------|
| 17.3 | City of San Gabriel | 7/27/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 17.4 | City of San Gabriel | 7/27/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 17.5 | City of San Gabriel | 7/27/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |
| 17.6 | City of San Gabriel | 7/27/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Responses to 1.2 and 2.1 |
| 18.1 | City of Signal Hill | 7/23/2009 & 7/29/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 18.2 | City of Signal Hill | 7/23/2009 & 7/29/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 18.3 | City of Signal Hill | 7/23/2009 & 7/29/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 18.4 | City of Signal Hill | 7/23/2009 & 7/29/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 19.1 | City of West Covina | 7/21/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 19.2 | City of West Covina | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 19.3 | City of West Covina | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 19.4 | City of West Covina | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 20.1 | City of Vernon | 7/23/2009 | Applying strict numeric limits to the iterative process | See Response to 4.1 |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|--|-----------|---|--|
| | | | attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | |
| 20.2 | City of Vernon | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 20.3 | City of Vernon | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 20.4 | City of Vernon | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 21.1 | City of Whittier | 7/24/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 21.2 | City of Whittier | 7/24/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 21.3 | City of Whittier | 7/24/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 21.4 | City of Whittier | 7/24/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 22.1 | Los Angeles Stormwater Quality Partnership | 7/28/2009 | A BMP approach is consistent with other Regional Boards and USEPA guidance, and builds upon BMP implementation already conducted in response to the LA River Trash TMDL. | See Response to 9.10 |
| 23.1 | Heal The Bay | 8/12/2009 | The Regional Board's proposal is required by law. | Staff agrees. See Response to 2.1 |
| 23.2 | Heal The Bay | 8/12/2009 | Staff's proposal is consistent with Regional Board and State Board actions. | Staff agrees. See Response to 9.8 |
| 23.3 | Heal The Bay | 8/12/2009 | The Regional Board should broaden the scope of the reopener to include additional TMDLs. | All available WLAs assigned to Permittees under the Los Angeles County MS4 permit will be incorporated into the MS4 permit, as resources permit and not later than the reissuance of the permit. At this time, the Regional Board is only able to address the incorporation of the LA River Watershed Trash TMDL WLAs. |
| 23.4 | Heal The Bay | 8/12/2009 | The Regional Board should clarify that Compton Creek is covered by the LA River Trash TMDL. | Compton Creek is a sub-watershed of the Los Angeles River watershed and its trash impairments are addressed, in |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|---------------------------------|-----------|--|---|
| 24.1 | Santa Monica Baykeeper | 7/28/2009 | The Municipal Storm Water Permit Reopener to incorporate the LA River Trash TMDL is required by the Clean Water Act and the California Water Code. | Staff agrees. See Response to 2.1 |
| 24.2 | Santa Monica Baykeeper | 7/28/2009 | Municipal Storm Water Dischargers have had adequate time to take measures to come into compliance with the TMDL and a Permit reopener is timely. | Staff agrees. See Response to 4.1 |
| 24.3 | Santa Monica Baykeeper | 7/28/2009 | The Regional Board should clarify that Compton Creek is covered by the LA River Trash TMDL. | See Response to 23.4 |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | Public Comment period is unclear. | Four opportunities for public comment were provided prior to the Board's consideration. These include the workshop held on July 29, 2009; the written comment period following the workshop, which ended on August 12, 2009; the written comment period following the October 8, 2009 public notice of the draft permit provisions and supporting documents, which ended on November 9, 2009; and the upcoming board hearing on the matter scheduled for December 10, 2009. |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | Incorrect reference to 40 CFR 122.44(d)(4)(9vii)(B) (the section does not exist) | Staff is uncertain where the reference in question exists, but the workshop public notice correctly references 40 CFR §122.44(d)(4)(vii)(B) |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | The Regional Board has not given any input on submitted LA River Trash TMDL implementation plans acceptability. | The LA River Trash TMDL is clear about the means by which compliance |

Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit

| No. | Author | Date | Comment | Response |
|------|-------------------------------------|-----------|---|--|
| 26.1 | Richards, Watson, and Gershon | 7/28/2009 | Practically, the elimination of all trash, as required by the TMDL, is difficult to measure and would require heroic efforts during times of winter storms. | with WLAs can be achieved— full capture systems, partial capture devices, and institutional controls. The TMDL is also clear that Permittees can apply any combination of these approaches, at their discretion, as long as the applicable WLAs are met. The implementation reports chiefly serve as a means of informing the Regional Board which approach(es) responsible jurisdictions intend to apply towards TMDL compliance. However, the Regional Board is in the process of providing input on these reports where it has been specifically requested. |
| | | | | For Permittees installing certified full capture systems, no measurement of trash is necessary. This is also the case for those installing partial capture devices with pre-determined site-specific performance. When combining partial capture installations with institutional controls or relying solely on institutional controls, however, an estimate of trash discharges is necessary for the purpose of determining compliance. This estimate is derived from a daily generation rate (DGR) for trash that is measured annually in a representative area of a given jurisdiction. The process for determining the DGR is outlined in the staff report for the Los Angeles River Watershed Trash TMDL and further detailed in the proposed permit provisions (see Part 7.1.B(1)(b)(2)). This process requires a single |

Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit

| No. | Author | Date | Comment | Response |
|------|-------------------------------|-----------|--|--|
| 26.2 | Richards, Watson, and Gershon | 7/28/2009 | Scientifically, the measuring of trash (itself a wide category) at a point that will effectively capture just a particular's City storm water discharges is a process that the Cities do not currently comprehend. | <p>measurement effort each year in the dry season and bases all wet weather discharge on this measurement. Therefore, no physical measurement of trash is required for most of the year and especially not during winter storms.</p> <p>See Response to 26.1</p> <p>Regional Board staff has always been available to provide clarification, where necessary. Also, some cities have already submitted reports of trash measurements that indicate full comprehension of methods provided in the TMDL staff report.</p> |
| 26.3 | Richards, Watson, and Gershon | 7/28/2009 | Legally, the City does not understand why the Regional Board feels compelled to move to strict numeric limits in light of USEPA policy guidance, the State Board's 2006 Blue Ribbon Panel Report, or any other standard. | <p>That notwithstanding, Permittees are not required to use the methodology outlined in the TMDL for estimating trash discharges. Permittees have the option of developing alternative compliance monitoring as long as the selected method is scientifically defensible. (See proposed provisions Part 7.1.B(1)(b)(3).) The Executive Officer will review any proposed alternatives and will issue approvals where appropriate.</p> <p>However, in recognition that further clarification of the method in question is warranted, this has been provided in the proposed permit provisions.</p> <p>See Responses to 2.1, 4.1 and 9.10</p> |
| 27.1 | Rutan | 7/27/2009 | No TMDL should be incorporated into an NPDES Permit until the Arcadia case has been resolved and the review | <p>The <i>Cities of Arcadia</i> case is currently on appeal, and accordingly there is no</p> |

Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit

| No. | Author | Date | Comment | Response |
|------|--------|-----------|--|---|
| | | | and necessary revisions of the Water Quality Standards completed. | <p>final judgment. Furthermore, the commenters already litigated and lost the claim that a prohibitory injunction was appropriate.</p> <p>Nevertheless, the TMDL has already undergone the analysis contemplated by the <i>Arcadia</i> case, and the courts have rejected the commenters' claims that the TMDL's 13241 analysis was inadequate. Failing to incorporate TMDLs into NPDES permits would be inconsistent with 40 CFR 122.44(d)(1)(B)(vii), and the timelines set forth in the TMDL itself.</p> |
| 27.2 | Rutan | 7/27/2009 | The term of the existing LA MS4 Permit has expired and the incorporation of the LA River Trash TMDL or any other TMDL should be addressed with the pending renewal process. | <p>See Response to 7.1</p> <p>Additionally, the Regional Board's response to the ROWDs submitted in June 2006, stated that, "[p]ursuant to 40 CFR 122.6, Order 01-182 shall remain in effect and enforceable until a replacement LA MS4 Permit is adopted by the board."</p> |
| 27.3 | Rutan | 7/27/2009 | Federal and State Policies provide for the use of BMPs in lieu of numeric WQBELs, when incorporating a TMDL. | See Response to 1.2 |
| 27.4 | Rutan | 7/27/2009 | Due to the variability of storm water, the USEPA believes permit limits can be expressed as BMPs, and only in rare instances will numeric limits be used. | See Responses to 1.2, 4.1, and 14.1 |
| 27.5 | Rutan | 7/27/2009 | Any attempt to impose strict compliance with WLAs in a storm water permit, or impose requirements stricter than federal law, or that do not exist in federal law, requires compliance with California Water Codes 13241 and 13000. | <p>The narrative objectives on which the TMDL numeric target and associated WLAs are based are the same as the narrative objectives recommended by US EPA under section 304(a) of the Clean Water Act. The TMDL and the WLAs established therein were approved by the US EPA under CWA section 303(d) as adequate to implement the water quality objectives</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|------|--------|-----------|--|---|
| 27.6 | Rutan | 7/27/2009 | Any additional monitoring or required investigations into water quality would trigger the need for a cost-benefit analysis pursuant to California Water Code Sections 13225, 13165, and 13267. | <p>for floatable materials and solid, suspended and settleable materials contained in the Basin Plan. Federal law and regulation requires that NPDES permits contain provisions consistent with the assumptions and requirements of any available WLA.</p> <p>Furthermore, since the provisions of the permit are practicable and reasonable, they are within the requirements of CWA section 402(p)(3)(B)(iii), and are therefore not beyond federal law. Accordingly, the holding of <i>Burbank v. SWRCB</i> is not triggered by this permit amendment. See finding 52.</p> <p>In any event, in <i>Cities of Arcadia v. SWRCB</i>, the commenters litigated and lost the claim that the Water Board's compliance with Water Code section 13241 was inadequate when the TMDL was adopted. The analysis undertaken in that proceeding is the same analysis that would be undertaken in this proceeding, with however, the benefit of several more years of development of economically achievable compliance options. The commenters have failed to explain how the analysis undertaken during the TMDL adoption is not applicable in this proceeding.</p> <p>See also Response to 27.1</p> |
| 27.7 | Rutan | 7/27/2009 | Any added mandates on the Cities with new permit forms | <p>Monitoring and reporting requirements under this permit are issued pursuant to Water Code section 13383, not 13165, 13225 or 13267.</p> <p>Staff does not believe that any of the</p> |

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

| No. | Author | Date | Comment | Response |
|-----|--------|------|--|--|
| | | | that are not mandated by federal law, must be funded in accordance with the California Constitution. | permit modifications are unfunded state mandates, as that term is used in the California Constitution. Nevertheless, should the commenters believe they have claim for subvention, the appropriate venue to determine that claim is with the Commission on State Mandates, not the Regional Board. See also Response to 27.6 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------------|---------|---|---|
| 1.1 | Hidden Hills | 11/6/09 | We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit | See Responses to comments 12.1 – 12.3. |
| 1.2 | Hidden Hills | 11/6/09 | The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional | The antibacksliding provisions of the Clean Water Act stipulate that effluent limitations contained in NPDES permits may not be relaxed unless the less stringent effluent limitations comply with the antidegradation requirements |

¹ Partner cities include Agoura Hills, Azusa, Beverly Hills, Calabasas, Hidden Hills, Monrovia, Norwalk, Rancho Palos Verdes, and Westlake Village.
² Submitted on behalf of the Cities of Arcadia, Carson, Commerce, Downey, Irwindale, Monterey Park, Signal Hill, South Gate and Vernon, and the ad hoc group of cities known as the Coalition for Practical Regulation (CPR). CPR consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.
³ Representing the Cities of San Gabriel, San Marino, Duarte, Irwindale, and South El Monte.

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------------|---------|--|--|
| 1.3 | Hidden Hills | 11/6/09 | <p>Board finds that less stringent effluent limitations are warranted. If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p> | <p>contained in §303(d)(4), or they fall into one of the statutory exceptions to this bar on backsliding. In either case, the less stringent effluent limitations must not result in a violation of the applicable water quality standard. Where a water quality standard has not yet been attained, §303(d)(4)(A) provides that any effluent limitation based on a WLA established in a TMDL may be revised if all revised effluent limitations based on the TMDL will result in the attainment of the applicable water quality standard. Any revised WLAs established during the reconsideration of the Los Angeles River Watershed Trash TMDL would be set to achieve the applicable water quality standards, as required by federal law; therefore, any revised effluent limitations based on the revised WLAs, even if less stringent, would be permitted under the antibacksliding provisions.</p> |
| | | | <p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.</p> | <p>The 50% reduction in question must be achieved and sustained prior to the reconsideration of the final waste load allocation. An initial demonstration of meeting the 50% target would likely not be made earlier than September 30, 2010, as the 50% reduction is not required before then. Therefore the earliest reasonable time to demonstrate that it has been sustained would be September 30, 2011, when a 60% reduction would be required. The determination of 50% compliance will be made on a watershed-wide basis. Therefore the Regional Board could be in a position to reconsider the final WLA in the period between October 2011</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|-------------|---------|---|---|
| 2.1 | Los Angeles | 1/09/09 | <p>Within the Findings document, Finding No. 57 it states "...In the latter case, compliance shall be determined based on direct measurement of trash discharges or site specific performance data." The City wants to ensure that "site specific performance" does not literally mean testing the performance of each device at every catch basin in the City, but that the intent is to demonstrate the performance of the device(s) within the specific jurisdiction or region. The City is concerned that the only proposed method for determining the effectiveness of institutional measures is through direct measurement of trash.</p> | <p>and September 2012, depending upon the responsible jurisdictions' compliance.</p> <p>The City is correct. "Site specific performance data" as used in the proposed permit provisions related to partial capture devices means data on the demonstrated performance of the device <i>in the jurisdictional area</i>, not at each individual site of installation. However, such data should be collected under different conditions (e.g. low to high trash loading). See proposed provisions in Part 7.1.B(1)(b)(1), which have been revised to clarify this. Revisions have also been made to the Fact Sheet to clarify how performance must be demonstrated.</p> |
| 2.2 | Los Angeles | 1/09/09 | <p>The City has a huge storm drain system with approximately 50,000 catch basins dispersed over 450 square miles, so the task of direct measurement is neither practical nor feasible.</p> <p>Therefore, our recommended change is as follows: "... In the latter case, compliance shall be determined based on direct measurement of trash discharges or jurisdiction/region specific performance data. For a large municipality/jurisdiction with 10,000 or more catch basins, the performance of the institutional measures may be determined through a pilot study performed within a representative area of such municipality/jurisdiction. The results of the study may then be used to report the effectiveness of the institutional measures deployed."</p> | <p>See Response to 2.1 as it related to performance data on partial capture devices.</p> <p>There is no requirement for direct measurement of all trash discharges in the Los Angeles River Watershed Trash TMDL or the proposed permit provisions.</p> <p>For Permittees installing full capture systems, no measurement of trash is necessary. This is also the case for those installing partial capture devices with pre-determined site-specific performance as described in the proposed provisions (see Part 7.1.B(1)(b)(1)).</p> <p>When combining partial capture installations with institutional controls or relying solely on</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>institutional controls, however, an estimate of trash discharges is necessary for the purpose of determining compliance. This estimate is derived from a daily generation rate (DGR) for trash that is measured annually in a representative area of a given jurisdiction. The process for determining the DGR is outlined in the staff report for the Los Angeles River Watershed Trash TMDL and further detailed in the proposed permit provisions (see Part 7.1.B(1)(b)(2)).</p> <p>Results from the representative area are extrapolated over the greater jurisdictional area. Therefore there is no need for direct measurement of trash throughout an entire jurisdictional area. Also, measurement of trash from the representative area(s) is limited to a single measurement effort each year in the dry season. All wet weather discharges are calculated based on this measurement.</p> <p>Annual recalculation of trash generated in the representative area allows for the demonstration of progressive trash reduction, as well as an iterative adaptive management approach to the implementation of trash control measures (i.e. jurisdictions can modify their implementation measures based on performance results).</p> <p>In addition, the annual assessment of the performance of institutional controls, specific to each jurisdiction, may result in the generation of sufficient site-specific data to overcome the uncertainty associated with the performance of</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|-------------|---------|---|--|
| 2.3 | Los Angeles | 1/09/09 | Within the Findings document, Finding No. 53 it states "...Violations of the effluent limitations, therefore, are limited to the days of a storm event greater than 0.25 inches." The reference to a storm event greater than 0.25 inches to assess violations is inaccurate and appears to be in conflict with the Full Capture System's definition. | <p>institutional control measures. This may eventually allow for determination of compliance with the final effluent limitation to be based on established performance as is the case for certified full capture systems and partial capture devices.</p> <p>Therefore, the current approach in the proposed permit provisions contains all the elements of the commenter's proposed pilot study.</p> <p>However, per the trash TMDL and proposed permit provisions, Permittees have the option of developing alternative compliance monitoring as long as the selected method is scientifically defensible (see Part 7.1.B(1)(b)(3)). The Executive Officer will review any proposed alternatives and will issue approvals where appropriate.</p> <p>The City of Los Angeles is encouraged to develop a work plan for the proposed pilot study for consideration by the Executive Officer. Regional Board staff will be available for consultation where necessary.</p> |
| | | | | <p>Not every storm event results in trash discharges. The TMDL states that storms of a magnitude 0.25" and greater tend to mobilize trash. Therefore, only storms of that magnitude or greater would be considered when determining whether or not a Permittee is in violation of the effluent limitation. The 0.25" storm event in question is the minimum storm</p> |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-----|-------------|----------|---|--|
| | | | | <p>event below which trash discharges are not expected to occur.</p> <p>This is not related to the performance standard of the full capture devices, which requires devices or systems to capture trash generated from a 1-year 1-hour storm (~ 0.6"). This performance standard is used for the sole purpose of determining the adequacy of a proposed full capture device.</p> <p>This has been clarified in Finding No. 53.</p> |
| 2.4 | Los Angeles | 1/09/09 | We recommend deleting the sentence and replacing it with one that references the definition of a full capture device in the TMDL. | See Response to 2.3 |
| 3.1 | Monrovia | 11/09/09 | We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit | See Responses to comments 12.1 – 12.3. |
| 3.2 | Monrovia | 11/09/09 | <p>The City is, however, concerned that the Clean Water Act's prohibition on antidegradation, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p> | See Response to 1.2 |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-----|--------------|----------|--|--|
| 3.3 | Monrovia | 11/09/09 | The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010. | See Response to 1.3 |
| 4.1 | San Fernando | 11/06/09 | We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopening of the LA MS4 Permit | See Responses to comments 12.1 – 12.3. |
| 4.2 | San Fernando | 11/06/09 | The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed. | See Response to 1.2 |
| 4.3 | San Fernando | 11/06/09 | The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010. | See Response to 1.3 |
| 5.1 | San Marino | 11/05/09 | We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopening of the LA MS4 Permit | See Responses to comments 12.1 – 12.3. |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|----------------|----------|---|--------------------------------|
| 5.2 | San Marino | 11/05/09 | <p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p> | See Response to 1.2 |
| 5.3 | San Marino | 11/05/09 | <p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.</p> | See Response to 1.3 |
| 6.1 | South El Monte | 11/09/09 | <p>The City incorporates by reference comments prepared by Richard Montevideo on behalf of the Coalition for Practical Regulations entitled: Comments on Proposed Modification to the County of Los Angeles Municipal Separate Storm Sewer System Permit Regarding the Los Angeles River Trash Total Maximum Daily Loads, 5, bearing the date of November 2009.</p> | See Responses to 13.1 – 13.27. |
| 6.2 | South El Monte | 11/09/09 | <p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional</p> | See Response to 1.2 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|----------------|----------|---|---------------------|
| 6.3 | South El Monte | 11/09/09 | <p>Board finds that less stringent effluent limitations are warranted. If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p> <p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010</p> | See Response to 1.3 |
| 7.1 | Vernon | 11/05/09 | <p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p> | See Response to 1.2 |
| 7.2 | Vernon | 11/05/09 | <p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no</p> | See Response to 1.3 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|----------|---|---|
| 8.1 | LAC | 11/09/09 | <p>later than September 2010.</p> <p>"Performance data" as it is used in Part 7.1.B(1)(a)(3) is vague and superfluous and therefore should be deleted.</p> | <p>The references to "performance data" under Parts 7.1.B(1)(a)(3) and 7.1.B(2)(b) as it relates to Full Capture Systems has been deleted. Performance data must be submitted as part of the certification process outlined in Part 7.1.B(1)(a)(1).</p> |
| 8.2 | LAC | 11/09/09 | <p>Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties.</p> <p>The Settlement Agreement requires the Regional Board to review and reconsider the final waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. The Regional Board subsequently incorporated this provision into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3.</p> <p>Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that is in the Basin Plan.</p> | <p>Finding No. 50 will be modified with the addition of the following sentence. "Should this reconsideration result in a modification to the final wasteload allocations, the permit will be reopened pursuant to Part 6., paragraph 1.1.b, to ensure the effluent limitations contained in Tables 1a and 1b of Appendix 7-1 are consistent with the assumptions and requirements of any revised wasteload allocations. (40 CFR § 122.44(d)(1)(vii)(B).)" This will align the proposed permit modifications with the TMDL and the Settlement Agreement.</p> |
| 8.3 | LAC | 11/09/09 | <p>The Trash TMDL Waste Load Allocations should be incorporated into the Permit as Municipal Action Levels, Not Effluent Limitations.</p> <p>Proposed Appendix 7.1 calculates the waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the</p> | <p>First, regarding the use of MALs to implement the Trash TMDL WLAs:</p> <p>The State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits recommended the use of "action levels" for catchments (drainage areas) not treated by a structural or treatment BMP, in</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---|---|
| | | | <p>caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action Levels Per Storm year", and references in proposed Part 7 to effluent limitations should be similarly revised. If this change is not made, the proposed amendment to the Permit would be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA guidance on incorporating TMDL waste load allocations into storm sewer permits.</p> | <p>lieu of setting numeric limits. These action levels would typically be representations of runoff quality, based on "outfall" monitoring data, for a geographical area. The panel proposed this approach as a means of identifying those catchments that discharge pollutants at levels clearly above the normal observed variability in stormwater discharges in order to focus implementation efforts on these areas. These action levels are expected to lower as a result of targeted management actions. The derivation of action levels is based on outfall sampling and does not take Water Quality Standards into consideration. Therefore, while this recommended approach may be an effective means of assessing stormwater program effectiveness, it does not directly address the issue of achieving receiving water quality standards and cannot be applicable to impaired waterbodies.</p> <p>TMDLs are developed when existing water quality control efforts (or programs) have failed to achieve water quality conditions necessary to support designated beneficial uses. TMDL waste load allocations (WLAs) are assigned to attain water quality standards in order to provide water quality sufficient to support the beneficial uses of a waterbody. These WLAs are generally set at or below the applicable water quality objective. The effluent limitations in the proposed permit provisions are consistent with the WLAs. Federal regulation requires that NPDES permits</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>must contain effluent limits and conditions consistent with the requirements and assumptions of available WLAs (40 CFR 122.44(d)(1)(vii)(B)). Incorporating the WLAs as Municipal Action Levels rather than effluent limitations would be contrary to federal regulations, as Action Levels have no basis in the water quality standards that the WLAs are designed to attain.</p> <p>Note: Action Levels are referred to as MALs by the commenter.</p> <p>Second, in TMDLs, which are adopted as regulations, point sources are assigned 'wasteload allocations'. These are then incorporated into individual permits as 'effluent limitations'. 'Wasteload allocations' and 'effluent limitations' are terms of art used in TMDLs and permits, respectively. Therefore, it is not inconsistent to refer to 'effluent limitations' in the permit, which have been derived from 'wasteload allocations' in a TMDL.</p> <p>Third, as for EPA's November 22, 2002 memorandum, EPA begins by reiterating the requirement set forth in federal regulation that, "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs" (40 CFR 122.44(d)(1)(vii)(B)). Nothing in EPA's 2002 memorandum substitutes</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>for those legally binding requirements. Wasteload allocations must be set to achieve water quality standards in the receiving water (see Clean Water Act 303(d)(1)(C)).</p> <p>EPA goes on to say that, "WQBELs [water quality-based effluent limitations] for NPDES-regulated storm water discharges that implement WLAs in TMDLs <u>may</u> be expressed in the form of best management practices (BMPs) under specified circumstances ... When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record ... needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. ... If it is determined that a BMP approach ... is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this."</p> <p>The Los Angeles River Watershed Trash TMDL and the proposed permit provisions allow Permittees the option of demonstrating compliance through a BMP-based approach, i.e. the progressive (i.e. iterative) installation of certified full capture systems, which have been determined in the TMDL and proposed permit provisions to perform to a standard sufficient to fully achieve the WLAs in the TMDL.</p> <p>However, the trash TMDL and the proposed permit provisions provide a variety of means to comply, including certified full capture systems,</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|--|
| | | | | <p>partial capture devices, and institutional controls. Unlike certified full capture systems, partial capture installations and institutional controls may not be sufficient to implement the final WLAs in the TMDL; therefore, per EPA's memo, it is necessary to include numeric effluent limitations and monitoring necessary to determine compliance.</p> <p>Furthermore, the trash TMDL is a case in which numeric effluent limitations are feasible and appropriate. While EPA recognized that high variability in storm events and minimal available data has generally resulted in difficulty characterizing pollutant loads in stormwater discharges from individual dischargers or groups of dischargers, this has been addressed in the trash TMDL. As part of the TMDL implementation, extensive monitoring was conducted early on to determine the baseline levels of trash discharges from each Permittee's jurisdictional area within the watershed. The TMDL and WLAs were revised to reflect the baseline trash discharges by jurisdiction determined from the two-year baseline monitoring. Additionally, a practical method for measuring annual trash discharges (i.e. Annual Storm Event Discharge calculations based on a Daily Generation Rate (DGR)) was developed to track reductions in trash discharges from the baseline.</p> <p>In sum, the proposed permit provisions, which</p> |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>incorporate the requirements of the WLAs in the TMDL as numeric effluent limitations, while providing a BMP-based option for compliance through progressive installation of certified full capture systems, is fully consistent with EPA's policy memorandum dated November 22, 2002.</p> <p>As for the Storm Water Panel Recommendations to the State Board (June 19, 2006), the panel's observations are largely inapplicable to trash discharges. The panel notes that it is difficult to (1) determine the level of control needed to protect beneficial uses, (2) monitor for enforcement of numeric effluent limitations, and (3) design a BMP that will produce a desired outflow concentration for a constituent of concern. The Los Angeles River Watershed Trash TMDL and proposed permit provisions address all these areas. The TMDL and supporting documentation identify (1) the level of control to protect beneficial uses through the establishment of the TMDL numeric target and BMP equivalent, (2) a methodology for monitoring compliance with the WLAs and associated effluent limitations through the use of Annual Storm Event Discharge calculations based on a representative DGR for the jurisdiction, or alternative scientifically defensible methods, and (3) a performance standard for BMPs that is sufficient to achieve the WLAs and, therefore, can be used in lieu of direct measurement of trash discharges to demonstrate compliance.</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|----------|--|--|
| 8.4 | LAC | 11/09/09 | The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits. | Therefore, Regional Board staff concludes that it is feasible to establish numeric effluent limitations to implement the WLAs based on the fact that the constraints on setting numeric effluent limitations identified by the panel have all been addressed in the case of regulating trash discharges as outlined in the Los Angeles River Watershed Trash TMDL. |
| 8.5 | LAC | 11/09/09 | The County requests that the following documents be admitted into evidence and made a part of the administrative record: Settlement Agreement Regarding Total Maximum Daily Loads for Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm Water Panel Recommendations to the California State Water Resources Control Board, June 19, 2006). EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs." | See Response to 8.3 Staff will recommend that these documents be added to the administrative record. |
| 9.1 | LACFCD | 11/09/09 | Proposed Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties | See Response to 8.2 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|----------|--|---|
| 9.2 | LACFCD | 11/09/09 | <p>The Settlement Agreement requires the Regional Board to review and reconsider the final waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. The Regional Board subsequently incorporated this provision into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3. Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that in the Basin Plan.</p> <p>Because the District Cannot Lawfully be made liable for actions of other Permittees over which it has no control, Proposed Part 7.1.B(4) should be deleted.</p> | <p>Part 7.1.B(4) recognizes the commenter's and other Permittees' statements in a variety of other proceedings that they lack authority, alternatively over particular parts of the MS4 infrastructure, or the land area discharging to the MS4. The MS4 infrastructure is by design a joint system that conveys and discharges commingled storm and non storm water runoff (containing pollutants) from municipal jurisdictions across the region to multiple waters of United States, including in relevant part, waters in the Los Angeles River Watershed. The MS4 permit was adopted following the filing of a report of waste discharge (ROWD), by the Los Angeles County Director of Public Works, on behalf of the "Los Angeles County Flood Control District, Los Angeles County, and the [83] incorporated cities." The ROWD proposed, and the MS4 permit therefore designates, the Flood Control District as the Principal Permittee. The Principal Permittee is expressly charged under the permit with the</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|--|
| | | | | <p>responsibility for coordinating and facilitating activities necessary to comply with the requirements of the permit and acting as liaison between the other Permittees and the Regional Board on permitting issues. The principal Permittee is also obligated to comply with the provisions of the permit that generally apply to the other Permittees as well (including implementing the SQMP within its jurisdiction). These are spelled out generally, inter alia, in Part 3, paragraphs D and E, respectively. Furthermore, the provisions of paragraph G require all Permittees to possess adequate legal authority to implement the requirements of the permit, including prohibiting litter from being discharged into the MS4 and to require the use of BMPs to prevent or reduce the discharge of pollutants to the MS4. The Clean Water Act and Porter Cologne Act place responsibility on the Flood Control District (the owner/operator) for discharges from its MS4 (a point source). The Co-Permittees are also responsible to the extent they control or discharge to portions of the MS4. Under the circumstances outlined above, it is not the responsibility of the Regional Board to determine which Permittees have legal authority over parts of the MS4 physically within their jurisdictions versus the Flood Control District. Clarifying that relationship is properly the responsibility of the principal Permittee and the other Permittees. Accordingly, the permit modifications expressly place that responsibility upon the Permittees, and the permit language</p> |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-----|--------|----------|--|--|
| 9.3 | LACFCD | 11/09/09 | There is no legal basis for joint and several liability under either the California Water Code or the Clean Water Act. | expressly assigns responsibility to the Flood Control District and the relevant Permittees in accordance with any agreement that they present to the Regional Board that allocates the full range of responsibility for compliance. Lacking such an agreement, and mechanism to determine individual Permittees' jurisdiction, the Regional Board may appropriately hold them jointly and severally liable, and allow them to subsequently determine for themselves how to reallocate that liability, either by agreement or an action in indemnity. |
| 9.4 | LACFCD | 11/09/09 | The Trash TMDL Waste Load Allocations should be incorporated into the Permit as Municipal Action levels, Not Effluent Limitations. Proposed Appendix 7-1 calculates the trash waste load allocations for each permittee per storm year and refers to | Nevertheless, in lieu of the agreement proposed in the draft permit, the Flood Control District has been invited to propose alternative provisions for staff consideration, provided the provisions ensure that there is complete responsibility allocated to the Permittee or the District or both of them for compliance with and authority to comply with the permit provisions, without a need on the part of the Regional Board to determine who has what authority as between them should an enforcement proceeding be necessary. See Response to 9.2 |
| | | | | See Response to 8.3 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|---------|----------|--|--|
| 9.5 | LACFCD | 11/09/09 | <p>them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action Levels Per Storm Year", and references in proposed Part 7 to effluent limitations should be similarly revised. If this change is not made, the proposed Permit amendment will be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA's guidance on incorporating TMDL waste load allocations into storm sewer permits.</p> | See Response to 8.4 |
| 9.6 | LACFCD | 11/09/09 | <p>The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits.</p> <p>The District requests that the following documents be admitted into evidence and made a part of the administrative record:</p> <p>Settlement Agreement Regarding Total Maximum Daily Loads for Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed.</p> <p>The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm water panel Recommendations to the California State Water Resources Control Board, June 19, 2006).</p> <p>EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."</p> | See Response to 8.5 |
| 10.1 | Dillard | 11/09/09 | How does this reopen to the Basin Plan change the non- | The proposed reopen is not an amendment to |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|---------|----------|--|---|
| 10.2 | Dillard | 11/09/09 | How does this reopener to the Basin Plan change the Non-adjudicated status of the Santa Monica Basin (not applicable to this reopener)? | the Basin Plan; it is a modification of the provisions of Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, which regulates urban runoff and stormwater discharges to waters within the Los Angeles Region, to implement the Los Angeles River Watershed Trash TMDL that was incorporated into the Basin Plan. The reopener does not affect the status of the Hollywood Basin. See Response to 10.1 |
| 10.3 | Dillard | 11/09/09 | Why are the Upper Los Angeles River Area Basins considered in the Basin Plan of the Coastal Watersheds of the Los Angeles and Ventura Counties? | The jurisdiction of the Los Angeles Regional Water Quality Control Board is established by statute in the Cal. Water Code section 13200(d) and encompasses all waters of the state, including surface waters and ground waters, within the statutory boundaries. See Response to 10.3 |
| 10.4 | Dillard | 11/09/09 | Why is the Hollywood Basin considered in the Basin Plan of the Coastal Watersheds of Los Angeles and Ventura Counties? | See Response to 10.3 |
| 10.5 | Dillard | 11/09/09 | How is private property being monitored for compliance? Have the private property owners been named in any legal action over any of these MS4 and/or NPDES requirements. | The permit generally requires the Permittees to monitor and control discharges into the MS4 by the citizens under their jurisdiction. Some private property is monitored for compliance under individual industrial stormwater permits, the statewide Industrial Storm Water General Permit (Order 97-03-DWQ), and the statewide Construction General Stormwater Permit (2009-0009-DWQ, effective 07/01/10). Each of these permits has its own monitoring and reporting requirements. See |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|--|---|
| 11.1 | HTB | 11/09/09 | The Regional Board's Proposal Is Required By Law | <p>http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml for annual reports submitted under the General Industrial Permit;</p> <p>http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wgo_2009_0009_app_3.pdf (bioassessment monitoring requirements for construction projects meeting certain thresholds); and specific monitoring and reporting requirements identified in the respective individual orders. Other private properties such as commercial properties are inspected for compliance by the municipalities as required by the LA County MS4 Permit (Order 01-182 as amended), Part 4 (Special Provisions), subparts B (Public Information and Participation Program), C (Industrial/Commercial Facilities Control Program), and G (Illicit Connections and Illicit Discharges Elimination Program).</p> |
| | | | | <p>Staff agrees. Federal regulations require that NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation (40 CFR 122.44(d)). Additionally, NPDES permits must contain provisions consistent with the State Water Quality Management Plan (Cal. Wat. Code § 13263). TMDLs are adopted by the Regional Board as amendments to the Regional Water Quality Control Plan (Basin Plan), which is a part of the State Water Quality Management Plan. Therefore, according to both federal and state</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|--|--|
| 11.2 | HTB | 11/09/09 | Staff's Proposal is Consistent with Regional Board and State Board Actions and USEPA Guidance. | <p>law, the Regional Board is obligated to incorporate the provisions and requirements of the TMDL into the permit.</p> <p>Staff agrees. The proposed reopener is consistent with the State Board's recent decision in which it stated, "It is our intent that federally mandated TMDLs be given substantive effect ... Doing so can improve the efficacy of California's NPDES storm water permits." The State Board concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based 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). Additionally, US EPA recently stated in its comment letter dated May 29, 2008, "EPA supports the approach used for incorporating TMDL WLAs in the August 28, 2007 second draft of this permit, in which the WLAs were incorporated as numeric water quality-based effluent limits (WQBELs) ... Under this approach, clear compliance determinations may be made, and the effectiveness of stormwater controls on water quality may be assessed. As a general matter, MS4 permits, many of which represent the fourth generation of permits to control municipal stormwater, should enable permitting authorities to more effectively determine compliance and evaluate impacts on water quality."</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|---|---|
| 11.3 | HTB | 11/09/09 | Heal the Bay requests that Order No. R8-2009-0030 be included in the administrative record for this matter. This evidence is relevant to demonstrate that other regional water boards have incorporated TMDL wasteload allocations expressed as numeric effluent limits in MS4 permits | Staff will not recommend inclusion of an order issued by the Santa Ana Regional Water Quality Control Board into the administrative record. Existing applicable legal authorities (including but not limited to SWRCB Order WQ 2009-0008) provide adequate authority for incorporation of the Trash TMDL and WLAs established therein into the MS4 permit in the manner proposed (including with numeric effluent limitations), or in an alternative manner that does not include numeric effluent limitations. |
| 11.4 | HTB | 11/09/09 | Heal the Bay requests that the USEPA letter be included in the administrative record for this matter. This evidence is relevant to demonstrate that USEPA has agreed that WLAs expressed as numeric limits are appropriate for MS4 permits | Staff will recommend inclusion of the US EPA letter dated May 29, 2008 regarding the Ventura County MS4 Permit into the administrative record. |
| 11.5 | HTB | 11/09/09 | The Regional Board Should Broaden the Scope of the Reopener to Include Additional TMDLs | All available WLAs assigned to Permittees under the Los Angeles County MS4 permit will be incorporated into the MS4 permit, as resources permit, and not later than the reissuance of the permit. At this time, the Regional Board is only able to address the incorporation of the LA River Watershed Trash TMDL WLAs. |
| 11.6 | HTB | 11/09/09 | At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well? | See Response to 11.5 Regarding the Ballona Creek Trash TMDL, the default wasteload allocations have not been updated to reflect the results of the Baseline Monitoring study conducted for that purpose. Therefore, it was not considered for inclusion in the proposed reopener. |
| 11.7 | HTB | 11/09/09 | The Regional Board should also include the Malibu | See Response to 11.5 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|---|---|
| 11.8 | HTB | 11/09/09 | <p>Nutrients and Bacteria TMDLs in the Reopener. We have included example language for several additional TMDLs in Attachment A.</p> <p>The Regional Board Should Clarify that Compton Creek and other Tributaries are Covered by the L.A. River Trash TMDL.</p> | <p>Compton Creek is a sub-watershed of the Los Angeles River watershed and its trash impairments are addressed, in their entirety, through the Los Angeles River Watershed Trash TMDL. All jurisdictions within the Compton Creek watershed are assigned WLAs for trash discharges under this TMDL. For this reason, the trash impairment in Compton Creek is recognized as being addressed by an EPA approved TMDL on the 2008 (most recent) 303(d) list that has been approved and adopted by the Regional Board.</p> |
| 11.9 | HTB | 11/09/09 | <p>Heal the Bay requests that the OPC's Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter be included in the administrative record for this matter. This evidence is relevant to demonstrate that trash reduction is a state priority.</p> | <p>Staff will evaluate whether to recommend inclusion of this document in the administrative record.</p> |
| 11.10 | HTB | 11/09/09 | <p>Many of the Cities that May Oppose Incorporation of this TMDL Have Received Millions of Dollars of Federal Stimulus Money from the State to Reduce Trash in the Los Angeles River.</p> <p>The Regional Board should not be dissuaded by these cities' arguments about cost or feasibility when these cities have acknowledged feasibility in their grant request to the State Board and have accepted taxpayer funds to address the problem specifically in the Los Angeles River Watershed.</p> | <p>Comment noted.</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|---|---|
| 11.11 | HTB | 11/09/09 | <p>Heal the Bay requests that the information from the Gateway grant request as well as the State Water Board's allocation of funds to those cities be included in the administrative record for this matter. This evidence is relevant to the cities' ability to comply with the TMDL as incorporated into the stormwater permit and to the State Water Board's support for their efforts to comply</p> | <p>Staff will recommend that the following documents be added to the administrative record: Application of the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority (Gateway IRWM Authority) for funding under the Nonpoint Source and Estuary Enhancement SRF Loan Program; State Water Board Clean Water State Revolving Fund Executed Agreements by County – All ARRA and CWSRF Funds since May 20, 2009; and Clean Water State Revolving Fund American Recovery and Reinvestment Act Status Report as of November 6, 2009.</p> |
| 11.12 | HTB | 11/09/09 | <p>The Regional Board Should Modify the Proposed Reopener Language. In general, the Regional Board should streamline the proposed Reopener language in Part 7. The proposed Reopener language includes a detailed discussion of compliance determination and Monitoring and Reporting Requirements. Reopener at Part 7, 1.B.-C. While this is important information, the Regional Board should describe these elements in a document outside of the L.A. County MS4 or incorporate the information by reference. Instead, the Regional Board should simply include numeric WLAs as effluent limits and required implementation actions and milestones in Part 7. We suggest following the approach taken in the recently adopted Ventura County MS4.</p> | <p>It is important and appropriate to include in the permit provisions that detail how compliance with the effluent limitations will be determined, and that establish monitoring and reporting requirements necessary to demonstrate compliance. Such provisions are standard in any permit. The US EPA in its comment letters dated May 29, 2008 and April 9, 2009 on the Ventura County draft MS4 Permit specifically identified the need to make it clear how compliance with TMDL WLAs will be determined. Staff believes it is helpful to the stakeholders to have a complete understanding of how the TMDL language will be implemented and will reduce ambiguity about compliance determinations if the specificity is contained in the permit.</p> |
| 11.13 | HTB | 11/09/09 | <p>Section 1.B.1.(b).1.</p> | <p>Compliance with the final wasteload allocation</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|---|--|
| 11.14 | HTB | 11/09/09 | <p>It appears that this section allows for final compliance with the use of only partial capture devices. This would obviously not make sense given the definition of a partial (not full) capture device. The Regional Board should clarify this section</p> <p>Section 1.B.1.(a).3</p> <p>The proposed Reopener appropriately describes that the entire L.A. River system must be addressed for compliance purposes. However, this is only described in the section on "Full Capture Systems". This should be included as an overarching concept for the Reopener</p> <p>We strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load</p> | <p>can not be achieved through the exclusive use of partial capture devices. This has been clarified in the permit provisions Part 7.1.B(1)(b) and Finding No. 57.</p> <p>The Los Angeles River Watershed Trash TMDL addresses trash impairments throughout the watershed. Wasteload allocations are assigned to all jurisdictions within the watershed. Compliance with the effluent limitations, therefore, shall be watershed-wide.</p> <p>Comment noted.</p> |
| 11.15 | HTB | 11/09/09 | <p>We strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load</p> | <p>Comment noted.</p> |
| 12.1 | LASQP | 11/05/09 | <p>Explicitly recognize and include the TMDL review / reconsideration step at the sustained 50% reduction mark</p> | <p>See Response to 8.2</p> |
| 12.2 | LASQP | 11/05/09 | <p>Allow for options in demonstrating achievement with Waste Load Allocation (WLA), i.e., "compliance monitoring", including quantification of reductions from full capture, partial capture, institutional controls, and other equivalents.</p> | <p>The proposed permit provisions allow several options for demonstrating compliance with the effluent limitations derived from the WLAs, including (1) installation and maintenance of certified full capture systems, (2) installation and maintenance of partial capture devices with device-specific performance data from the jurisdictional area, and (3) use of partial capture devices and institutional controls with measurement of trash discharges using (i) DGR or (ii) another scientifically based approach to measurement approved by the Executive Officer. See proposed provisions Part 7.1.B.</p> <p>Comment noted.</p> |
| 12.3 | LASQP | 11/05/09 | <p>LASQP recognizes and appreciates that these have in fact been explicitly incorporated into the proposed Permit</p> | <p>Comment noted.</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|--|--|
| 13.1 | Rutan | 11/06/09 | Submitted on behalf of the Cities of Arcadia, Carson, Commerce, Downey, Irwindale, Monterey Park, Signal Hill, South Gate and Vernon, and the ad hoc group of cities known as the Coalition for Practical Regulation Object to the limited Administrative Record reflected in the Index of Administrative Record sent October 15, 2009. The Cities respectively request that their comments dated July 27, 2009 along with all exhibits included therewith and all other Comments submitted by interested parties, along with the Record of any Comments provided during the Workshop on July 29, 2009, be made a part of the Administrative Record and be available for the Board's consideration prior to amending the NPDES permit in question. The Index to the Administrative Record should similarly be corrected. | All materials from the Public Workshop held on July 29, 2009 as well as all written comments submitted during the open comment period following the workshop are included in the Administrative Record. The Administrative Record Index includes "[a]ll timely comment letters and evidence received by the Regional Board" (Item 44) and "Staff's Responses to Comments" (Item 45), which includes written comments and supporting exhibits solicited following the public workshop and staff's responses to those comments. All written comments received in response to the public workshop and during the October 8 – November 9 public comment period along with staff's responses to those comments will be included in the board's agenda package for their consideration prior to the board hearing on this matter. A final Administrative Record Index will be prepared after the Board hearing, which will include an itemized list of all comment letters received. |
| 13.2 | Rutan | 11/06/09 | It is inappropriate to revise the NPDES Permit as proposed, and specifically it is inappropriate to "implement the Trash TMDL with numeric effluent limitations" in a municipal separate storm sewer system ("MS4") permit under the present circumstances, for the following reasons: | See Responses below. |
| 13.3 | Rutan | 11/06/09 | Because the Clean Water Act does not require that the subject NPDES Permit include numeric effluent limits, any attempt to include either a numeric effluent limit for | It is well established that the federal Clean Water Act authorizes imposition of provisions in an MS4 permit that require strict compliance with |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---|--|
| | | | <p>purposes of the Trash TMDL, or any other numeric effluent limit for any other TMDL into the NPDES Permit in issue, is an attempt to impose a requirement that clearly goes beyond the requirements of the Clean Water Act.</p> | <p>water quality standards. (See e.g., <i>Defenders of Wildlife v. Browner</i>.) Federal regulations require all NPDES permits to be consistent with the assumptions and requirements of applicable waste load allocations established under section 303(d). The permit provisions are practicable, and therefore well within the federal mandate in Clean Water Act section 402(p) that the Permittees reduce pollutants in storm water to the "maximum" extent practicable.</p> <p>The commenter suggests that the manner of measuring compliance with required trash abatement somehow imposes different costs and burdens upon the Permittees, but that is not the case. Assuming the Permittees intend to comply with the provisions of the TMDL (staff has no reason to believe they do not), the costs and burdens associated with complying with the waste load allocations are the same, irrespective of whether enforcement for noncompliance is triggered by measuring effluent concentrations numerically or by assessing whether the Permittee has actually implemented and is maintaining appropriate BMPs. In either case, the Permittees must rely upon the same suite of structural or non-structural best management practices and institutional controls to stop people from littering, prevent trash that was littered into the streets from getting into the storm drains, and/or capture litter that enters the drains before it is discharged into the receiving waters. The waste load allocations are the same irrespective</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|--|--|
| 13.4 | Rutan | 11/06/09 | Therefore all requirements under the California Porter-Cologne Act ("PCA") must be complied with by the Regional Board before such new Permit terms may be imposed. | of the manner of compliance or manner of assessing penalties. The only manner that is not the same is that to enforce this TMDL, the proposal does not rely upon the previous iterative approach to trash abatement, since that approach has not resulted in compliance with water quality standards since the current permit was adopted in 2001, or since 1998 when the Los Angeles River was listed as impaired. In other words, requiring that water quality improvements occur, and holding Permittees responsible to ensure they occur, amid a practicable and feasible time frame (while allowing the Permittees the option to choose a numeric effluent limitation or a BMP based approach) does not render the permit provisions "beyond the requirements of the Clean Water Act." |
| 13.5 | Rutan | 11/06/09 | Requiring strict compliance with numeric effluent limits for the Trash TMDL, where the WLAs are, in fact, actually unachievable (and where deemed compliant full capture devices show an iterative Best Management Practices ("BMPs") approach is necessary), sets the wrong precedent for the incorporation of other TMDLs that cannot be complied with through iterative MEP-compliant BMPs. | See response to 13.3. The commenter litigated and lost the claim that the TMDL is not achievable. (See <i>Crites of Arcadia v. SWRCB</i> .) Staff believes that given the present attainability of the wasteload allocations, the continued trash impairments in the Los Angeles River Watershed despite nearly two decades of the iterative approach under the MS4 Permit, and for the reasons set forth in the Fact Sheet, the correct approach for incorporating |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|------|--------|----------|---|---|
| 13.6 | Rutan | 11/06/09 | The Cities request that this policy issued by US EPA Headquarters in Washington, DC, be followed, and that because no "findings" have been included with the proposed Permit Amendment in question to support a determination that the Trash TMDL is the "rare case," that the Proposed Amendment not be adopted. | this TMDL and its WLAs is the manner proposed by staff. However, with regard to other TMDLs, as the State Board said in Order WQ 2009-0008, the question of how to implement TMDLs in MS4 permits is a fact-specific inquiry. See Findings 45 and 46, and Fact Sheet pages 19-21. See also Response to 8.3. Staff does not believe it necessary or appropriate to adopt findings prejudging how future TMDLs should be incorporated into the MS4 permit. Notably, the only other TMDLs in the LA MS4 permit were not implemented with numeric effluent limitations, but with receiving water limitations. The <i>Cities of Arcadia</i> case is currently under appeal and is therefore not final. The plaintiffs' request for a prohibitory injunction was rejected by the Orange County Superior Court. Further, the TMDL has already been litigated, and the commenters' challenge predicated on Water Code section 13241 was rejected. The TMDL deadlines necessitate taking this action at this time. |
| 13.7 | Rutan | 11/06/09 | Any incorporation of a TMDL into the MS4 Permit in question is premature at this time in light of the Orange County Superior Court's recent decision in <i>City of Arcadia v. State Board, OCS Case No. 06CC02974</i> (the "Arcadia Case"). | See response to 13.7 |
| 13.8 | Rutan | 11/06/09 | Developing Standards in accordance with law before enforcing them is particularly important in connection with the subject Trash TMDL because not only has the Water Code section 13241/13000 analysis never been conducted vis-à-vis Stormwater for any of the Standards upon which the Trash TMDL is based, it is also clear from the face of the Trash TMDL Report that the TMDL was developed, in part, to protect improperly designated "potential" beneficial uses. | See response to 13.7 |
| 13.9 | Rutan | 11/06/09 | All other adopted TMDLs must be reevaluated and | See response to 13.7 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|--|--|
| 13.10 | Rutan | 11/06/09 | <p>readopted before being incorporated in any fashion into the subject NPDES Permit.</p> <p>Incorporation of the Trash TMDL into the subject NPDES Permit is further premature and inappropriate at this time given that all Permittees have already submitted timely applications to renew the existing MS4 NPDES Permit. Rather than modify the existing NPDES Permit to incorporate a single TMDL, the Cities respectfully request that their renewal applications be finally processed, and that any incorporation of the subject TMDL be conducted at such time as the existing NPDES Permit is renewed and after the Arcadia Case decision has become final.</p> | <p>While the expiration date of the permit was December 12, 2006, as provided for in federal and state regulation, the "terms and conditions" of the permit have been administratively extended. Those terms and conditions include the reopeners identified in Part 6.I.</p> <p>The provisions of federal and state regulation recognize and provide for the fact that often resource constraints prevent the permitting authority from reissuing permits immediately upon expiration (23 Cal. Code Reg. 2235.4 and 40 CFR 122.41(f) and 122.62). That is the case with the Los Angeles County MS4 permit. In its response to the 2006 ROWDs, the Regional Board stated that, "[p]ursuant to 40 CFR 122.6, Order 01-182 shall remain in effect and enforceable until a replacement MS4 Permit is adopted by the Board."</p> <p>The Los Angeles River Watershed Trash TMDL is a regulation adopted by the Regional Board, and compliance with certain provisions of the TMDL, including WLAs, is required prior to the time that the LA County MS4 permit can be reissued. The only way to ensure compliance is to incorporate the relevant provisions into the MS4 permit. Moreover, federal regulations require that NPDES permits incorporate provisions consistent with the assumptions and requirements of available wasteload allocations.</p> |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-----|--------|------|---------|---|
| | | | | <p>While reissuing the permit would be preferable, it cannot be accomplished in time to ensure compliance with interim WLAs established in the TMDL. Accordingly, reopening the permit is the only option that would timely implement federal regulations, and the Regional Board's regulations (the TMDLs).</p> <p>To fulfill the purposes of the Clean Water Act, the regulations authorize an agency to modify a permit at an interim time if certain circumstances, applicable here, exist. These include implementing newly adopted basin plan provisions (including TMDLs). 40 CFR 122.62 discusses the circumstances under which a permit may be reopened. Notably, the permit contains a specific reopener to incorporate modifications to the basin plan. Since the proposed modification is based upon a reopener provided in the permit, either subdivision (a)(7) or (a)(3) provides authority for the modification.</p> <p>Reopening the permit at this time is wholly appropriate given that compliance with interim WLAs of the TMDL was required beginning in September 2008. All Permittees under the LA County MS4 Permit have been on notice since 2001 that the Fact Sheet of the Los Angeles County MS4 Permit anticipated the incorporation of TMDLs. Additionally, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the TMDL will be through the MS4 Permit (Basin Plan Table 7-</p> |

**Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009**

| No. | Author | Date | Comment | Response |
|-------|--------|----------|---|--|
| 13.11 | Rutan | 11/06/09 | The implication with the new definition of "Drainage" under the Permit that "urban runoff" is not "stormwater," is contrary to the plain language of the federal regulations to the CWA, as well as prior State Board Orders and representations of State and Regional Boards' counsel in the Arcadia Case | Without responding to the commenters' assertions, the definition of the term "drainage" has been removed because the word is not used in the context of the definition. See response to 13.25. |
| 13.12 | Rutan | 11/06/09 | Also contrary to the plain language of the CWA is the statement in the Fact Sheet (p. 11-12) that the "maximum extent practicable" ["MEP"] standard under the Clean Water Act only applies to discharges of pollutants "from storm water." | Since section 402(p)(3)(B)(ii) requires that non-storm water discharges into the MS4 be effectively prohibited, the MEP language contained in 402(p)(B)(iii) can only refer to pollutants in storm water. MEP does not apply to section 402(p)(3)(B)(ii). |
| 13.13 | Rutan | 11/06/09 | No Permit modification requiring additional monitoring and reporting requirements may lawfully be adopted at this time until the requirements of Water Code sections 13225 and 13267 have been met. | Monitoring and reporting requirements under this permit are issued pursuant to Water Code section 13383, not 13225 or 13267. |
| 13.14 | Rutan | 11/06/09 | Because the Proposed Amendment requires the Trash TMDL WLAs to be incorporated into the subject NPDES Permit as strict "numeric effluent limits," i.e., requires incorporation in a manner that is not required by federal law, and because the Proposed Amendment continues to require the Cities to install and maintain trash receptacles at all transit stops within their jurisdictions, such requirements constitute unfunded State mandates which may not be imposed upon the Cities without the State first providing funding in accordance with the requirements of the California Constitution and the implementing Legislation thereunder. | Without responding to the commenters' assertions with respect to federal law and unfunded mandates, staff agrees that the proposed modifications to Part 4 are redundant with the provisions of Part 7. Staff will therefore propose withdrawing the modifications to Part 4, except to clarify that it no longer applies to the Permittees subject to the Los Angeles River Watershed Trash TMDL. |
| 13.15 | Rutan | 11/06/09 | As in part reflected (although not entirely accurately) in the proposed new Findings to the subject Permit, this Trash TMDL has a storied past | The commenters' perspective is noted. |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|--|---|
| 13.16 | Rutan | 11/06/09 | The claim that the Regional Board "is not aware" of other mechanisms to achieve compliance with the WLAs is, of course, not a legitimate "finding" that can rightfully be used to support applying "numeric effluent limitations" to Stormwater discharges, and specifically is not an appropriate finding to support the "rare instance" noted by EPA as to when "numeric effluent limits" may appropriately be applied to Municipal Stormwater dischargers | The quoted language is taken out of context. The quoted language in the finding speaks to the appropriate basis in support of the modifications that given the history of trash impairment in the watershed, staff concludes that alternatives to actual enforceable requirements with firm deadlines for compliance will not result in attainment of water quality standards. |
| 13.17 | Rutan | 11/06/09 | The fact that "actual compliance" with the zero WLA is never referenced anywhere in the Permit Amendment as being achievable (with the Permit Amendment instead providing that compliance with the Permit Amendment is "practicable" because of the availability of deemed full-capture BMPs), confirms that "strictly" complying with the "zero" trash limit is unreasonable and not economically achievable, and that "strict compliance" with the WLAs is only possible through an iterative deemed-compliance BMP approach | See response to 13.5. Notably, Desi Alvarez, speaking on behalf of the Gateway Region Integrated Regional Water Management Joint Powers Authority, testified to the Regional Board during public comments at its November 5, 2009 board meeting, about the member cities' compliance with the Trash TMDL, specifically that "it looks like we will be complete with the project [installation of full capture devices in approximately 11,000 catch basins in 16 cities that drain to the Los Angeles River] by the end of next year, and at that point everybody will be in compliance." The comment submitted by the commenters' attorney is therefore contradicted by the testimony of the clients themselves. Deemed compliance is an appropriate regulatory tool, affirmed by the court of appeal in <i>Cities of Arcadia</i> , and was initially adopted in consultation with the City and County of Los Angeles to ensure a safe harbor to compliance. Nevertheless, the Permittees are entitled to comply with the waste load allocations in any lawful manner, and the Regional Board supports their efforts in that regard. |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|--|--|
| 13.18 | Rutan | 11/06/09 | <p>The litigation history described above and the iterative development of the various full-capture devices to be utilized as "deemed" compliance with the TMDL, reinforces the fact that TMDL is not the "rare case" where numeric effluent limits must be applied to achieve strict compliance with the WLAs, and that the opposite is the case here, i.e., that compliance is only "reasonably achievable" through the use of iterative BMPs.</p> | <p>Staff is unclear why the commenters appear to be arguing against the proposal to allow a variety of compliance options, in favor of an approach that mandates a single specific compliance approach. Staff believes that allowing Permittees to determine which compliance approach or approaches is best to achieve compliance given their particular topography, geography and demographics provides the greatest flexibility to the Permittees to ensure timely compliance with the interim and final waste load allocations while leaving available the opportunity for innovation.</p> <p>EPA's guidance memorandum, which is not a regulation but is suggestive of approaches, did not specifically address a trash TMDL (or any specific TMDL) and clearly indicates that a case-by-case assessment of the appropriate approach is necessary. Moreover, page 2 of the 11/22/02 memorandum states that "[w]hen a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 CFR §§ 124.8, 124.9, and 124.18."</p> <p>Except with respect to those BMPs certified as full capture, staff lacks the evidence to make appropriate findings that other BMPs will result in attainment of the WLAs in any or all circumstances.</p> |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|--|--|
| 13.19 | Rutan | 11/06/09 | The incorporation of the Trash TMDL into the NPDES Permit must now itself still be conducted in accordance with applicable State and federal law, specifically including, but not limited to, the need to develop "reasonably achievable" and "economically" defensible permit requirements | Without responding to the commenters' assertions with respect to the legal requirements, the evidence in the administrative record demonstrates that the permit requirements are reasonably and economically achievable. |
| 13.20 | Rutan | 11/06/09 | The Proposed Permit Amendment continues to mandate that the Permittees place and maintain such trash receptacles. Accordingly, this provision, along with the requirement to strictly comply with the Trash TMDL's WLAs, may only be required of the Cities where the State has committed appropriate funding to the Cities to comply with these State mandates. | See response to 13.14. |
| 13.21 | Rutan | 11/06/09 | No TMDL Should Be Incorporated Into The NPDES Permit Until The Arcadia Case Has Been Resolved And The Review And Necessary Revisions Of The Water Quality Standards Ordered Therein, Completed | See Response to 13.7 |
| 13.22 | Rutan | 11/06/09 | The Term Of The Existing NPDES Permit Expired On December 12, 2006, And The Incorporation Of This Or Any Other TMDL Should Be Addressed In Accordance With The Pending Permit Renewal Process | See Response to 13.10 |
| 13.23 | Rutan | 11/06/09 | ANY PERMIT TERM INCORPORATING A TMDL MUST BE IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW AND POLICIES. A. Federal And State Policies Provide For The Use Of Best Management Practices ("BMPs") In Lieu Of Numeric Water Quality-Based Effluent Limitations, in Stormwater Permits When Enforcing a TMDL Or Otherwise | See Response to 8.3 |
| 13.24 | Rutan | 11/06/09 | Any Attempt To Impose Strict Compliance With WLAs In A Stormwater Permit, Or To Impose Other Requirements That Go Beyond Federal Law Or That Do Not Exist In Federal Law, Require Compliance With Water Code | Since the provisions of the permit are in fact practicable and reasonable, they are within the requirements of CWA section 402(p)(3)(B)(iii), and are therefore not beyond federal law. |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|---|---|
| 13.25 | Rutan | 11/06/09 | With The Proposed Permit Terms, The Regional Board is Arbitrarily Attempting To Redefine "Stormwater" To Exclude "Urban Runoff" | Accordingly, the holding of <i>Burbank v. SWRCB</i> is not triggered by this permit amendment. See finding 52. Additionally, the narrative objectives on which the TMDL numeric target and associated WLAs are based are the same as the narrative objectives recommended by US EPA under section 304(a) of the Clean Water Act. The TMDL and the WLAs established therein were approved by the US EPA under CWA section 303(d) as adequate to implement the water quality objectives for floatable materials and solid, suspended and settleable materials contained in the Basin Plan. In any event, in <i>Cities of Arcadia v. SWRCB</i> , the commenters litigated and lost the claim that the Water Board's compliance with Water Code section 13241 was inadequate when the TMDL was adopted. The analysis undertaken in that proceeding is the same analysis that would be undertaken in this proceeding, with however, the benefit of several more years of development of economically achievable compliance options. The commenters have failed to explain how the analysis undertaken during the TMDL adoption is not applicable in this proceeding. The commenters seem to suggest without legal authority, that "urban runoff" is a component of the federally defined term "storm water". "Urban runoff" however, is not a federally defined term, and the word "urban" does not appear in the definition of "storm water". By introducing the word "urban", the commenters apparently seek |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-------|--------|----------|--|--|
| 13.26 | Rutan | 11/06/09 | Any Additional Monitoring Or Required Investigation Into Water Quality Would Trigger The Need For A Cost-Benefit Analysis Pursuant To Water Code Sections 13225 And 13267. | to redefine the federal definition of "storm water", contained in 40 CFR 122.26(b)(13) ["storm water runoff, snow melt runoff, and surface runoff and drainage"], to include runoff and drainage that is not associated with precipitation events but with activities of urban living. Their approach is not supported by legal authority, and is inconsistent with federal regulations which exclude drainage incident of urban living, such as from water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration and pumped ground water, potable water discharges, air conditioning condensate, line flushing, fire fighting, and other such activities, as "non-storm water." 40 CFR 122.26(d)(2)(iv)(B)(1). See Response to 13.13. |
| 13.27 | Rutan | 11/06/09 | Any Added Mandates On The Cities With New Permit Terms That Are Not Mandated By Federal Law, Must Be Funded In Accordance With The California Constitution. | See Response to 13.14. Staff does not believe that any of the permit modifications are unfunded state mandates, as that term is used in the California Constitution. Nevertheless, should the commenters believe they have claim for subvention, the appropriate venue to determine that claim is with the Commission on State Mandates, not the Regional Board. |
| 14.1 | Tahir | 11/09/09 | The cities of San Gabriel, San Marino, Duarte, Irwindale, and South El Monte incorporate by reference comments prepared by Richard Montevideo of Rutan and Tucker (see attached) in re: the proposed reopener of the current | Comment noted. See Responses to 13.1 – 13.27 |

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

| No. | Author | Date | Comment | Response |
|-----|--------|------|---|----------|
| | | | MS4 permit to admit the trash TMDL for the Los Angeles River. | |