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December 10, 2012

VIA ELECTRONIC MAIL

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Re: City of Monrovia Petition for Review Re: LARWQCB Order No. R4-2012-0175

Dear Ms. Bashaw:

The City of Monrovia ("City" or "Petitioner") hereby submits this Petition for Review ("Petition") to the California State Water Resources Control Board ("State Board") pursuant to section 13320(a) of the California Water Code ("Water Code"), requesting that the State Board review an action by the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"). Specifically, Petitioner seeks review of the Regional Board's November 8, 2012 Municipal Separate Stormwater Sewer System ("MS4") Permit, Order No. R4-2012-0175, reissuing NPDES Permit No. CAS004001 ("Permit").

Petitioner requests that this Petition be held in abeyance at this time pursuant to 23 C.C.R. § 2050.5(d). As an initial matter, Petitioner has every intention in abiding by the Permit in good faith and is genuinely optimistic about working with the Regional Board to assess and implement the strategies and requirements necessary for compliance. Nevertheless, the Permit contains significant issues that concern Petitioner, and other aspects that the Petitioner believes are flawed. Thus, while Petitioner has every hope that it will not need to request that the State Board act on any of the issues raised herein, as a matter of prudence and protection against the uncertainty of such a momentous and unprecedented Permit and other potential legal challenges that may ultimately alter the Permit, the Petitioner wishes to file this Petition and have it held in abeyance until such time as Petitioner requests the State Board to act on the Petition, if ever.

1. **Names, Addresses, Telephone Numbers and E-mail Addresses of Petitioner**

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2. **The Specified Action of the Regional Board Upon Which Review is Sought**

By this Petition, the City is challenging the Regional Board's November 8, 2012 adoption of the "Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4," Order No. R4-2012-0175, reissuing NPDES Permit No. CAS004001 ("Permit").

3. **The Date of the Regional Board's Action**

The Regional Board approved the challenged Permit on November 8, 2012.

4. Statement of Reasons the Action of the Regional Board was Inappropriate and Improper

Petitioner believes the Permit generally embodies a workable approach to improving water quality in the County, while reflecting the work the permittees have initiated during the prior permit terms and the work they have committed to perform in the future. However, several provisions of the Permit – including the imposition of numeric standards in the Receiving Water Limitations provisions, the manner of the incorporation of various Total Maximum Daily Loads ("TMDL") and numeric Water Quality Based Effluent Limitations ("WQBEL") provisions, the Permit's monitoring requirements, the Permit's economic considerations, provisions on joint liability, and certain minimum control measures – are inappropriate or improper in that, among other things, they impose obligations on Petitioner that are not mandated or supported by the Clean Water Act ("CWA"), the Porter-Cologne Water Quality Control Act ("Porter-Cologne"), or other applicable law. A more detailed discussion of these issues is provided in the Statement of Points and Authorities below.

5. The Manner in Which the Petitioner Has Been Aggrieved

Petitioner is a permittee under the Permit. It, along with the other permittees, is responsible for compliance with the Permit. Failure to comply with the Permit exposes Petitioner to administrative liability under the CWA and Porter-Cologne and potential lawsuits by the Regional Board and/or third parties under the CWA's citizen suit provision. To the extent that certain provisions in the Permit are improper or inappropriate, Petitioner should not be subject to such actions.[1]

6. The Specific Action Requested of the State Board With This Petition

The issues raised in this Petition may be resolved or rendered moot by actions to be taken by the permittees, Regional Board staff actions, amendment of the Permit, and/or developments in other jurisdictions. Accordingly, Petitioner requests the State Board hold this Petition in abeyance at this time pursuant to 23 C.C.R. § 2050.5(d). Depending on the outcome of these actions, Petitioner will, if necessary, request the

[1] Petitioner may provide the State Board with additional information concerning the manner in which it has been aggrieved by the Regional Board's action in adopting the Permit. Any such additional information will be submitted to the State Board as an amendment to this Petition.

State Board to act on all or some of the issues raised in the Petition and schedule a hearing. Petitioner will provide a complete list of specific actions requested if and when the Petitioner requests the State Board to act on this Petition.

7. Statement of Points and Authorities in Support of Legal Issues Raised in the Petition

The following is a brief discussion of the issues Petitioner raises in this Petition. In addition to the issues discussed below, to the extent not addressed or inadequately addressed by the Regional Board in its responses to comments, Petitioner also seeks review of the Permit on the grounds raised in Petitioner's previous written comments, copies of which are attached hereto as Exhibit "A." Petitioner will submit to the State Board a complete statement of points and authorities in support of this Petition, as necessary, if and when Petitioner requests the State Board to take the Petition out of abeyance and act upon it.

a. The Permit Should Be Revised To Be Consistent with the Maximum Extent Practicable Standard and State Policy by Allowing Compliance Through an Iterative Management Process and Not Require Strict Adherence to Numeric Standards in Receiving Waters and for WQBELs

Consistent with both State and Federal standards, and in particular the Federal Maximum Extent Practicable ("MEP") standard applicable to municipal storm water permits, permittees should be able to achieve compliance with the entire Permit through good faith adherence to a best management practice ("BMP")-based iterative approach. The Permit, on the other hand, and contrary to controlling policy, appears to require adherence to strict numeric standards in receiving water bodies and for WQBELs.

The Federal MEP standard for MS4 Permits is a BMP-based, iterative process that does not require adherence to strict numeric standards. *See* Permit, Attachment A, p. A-11; 2003 EPA Memo, "Guidance on Definition of Maximum Extent Practicable"; *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999); *Divers Environmental Conservation Organization v. State Water Resources Control Board*, 145 Cal.App.4th 246, 256 (2006); *BIA v. State Water Quality Resources Control Board*, 124 Cal.App.4th 866, 889-90 (2004); 1993 State Board

Memorandum, "Definition of Maximum Extent Practicable." Accordingly, the Permit's imposition of numeric standards exceeds the Federal MEP, which has numerous legal ramifications discussed further below.

Under a regime of enforceable numeric standards, even if the permittees are doing all they can by implementing required BMPs in good faith, they can still be held in violation of the Permit, for reasons that are entirely beyond their control. Such an outcome is unfair, and contrary to law. *BIA*, *supra*, 124 Cal.App.4th at 889 (MEP standard requires showing of technical and economic feasibility); *Hugley v. JMS Dev. Corp.*, 78 F.3d 1523, 1529-30 (11th Cir. 1996) (The CWA does not require permitees to achieve the impossible). The MS4 is too large, too complicated, and there is no model to assess and track the movement of pollutants into, through, and out of it. Accordingly, numeric standards are simply inappropriate at this time.

i. The Receiving Water Limitations Language's Numeric Standards

The Receiving Water Limitation ("RWL") provisions of the Permit indicate that strict adherence to the numeric water quality standards is required in receiving waters for permittees, regardless of whether a permittee adheres to a BMP-based iterative approach in good faith or not. *See, e.g.*, Permit, part V.A.1; Fact Sheet pp. F-36-37.

In prior permits, the RWL standard, despite having similar (but not identical) language, was understood to be an iterative process where compliance would not be measured according to numeric water quality exceedances, but through a BMP-based iterative process. *See* State Board Order No. 99-05; State Board Order No. 2001-15.

The RWL language in the Permit is inconsistent with State Board Water Quality Order No. 99-05 and other prior precedents and Orders. State Board Water Quality Order No. 99-05 unequivocally requires compliance with storm water management plans as a means of complying with receiving water limitations and, therewith, water quality standards. In State Water Quality Order No. 2001-15, the State Board affirmed the iterative approach in stating that "we will generally not require 'strict adherence' with water quality standards through numeric effluent limitations and we continue to follow an iterative approach." State Board Order No. 2001-15, p. 8. Finally, most recently, the State Board, on September 7, 2012, found that "[i]t is not feasible at this time to set enforceable numeric effluent criteria for

municipal BMPs and in particular urban discharges." *See* Fact Sheet for NPDES Permit and Waste Discharges Requirements for State of California Department of Transportation, NPDES Permit No. CAS000003, Order No. 2012-XX-DWG.

Although these latter items regard numeric effluent limitations, the same logic is even more applicable to receiving water limitations, over which individual permittees maintain even less control. Imposing numeric standards for the receiving water body is infeasible, unachievable, and will require the development of BMPs that violate and exceed the requirements of law. *See* Permit, Attachment A, p. A-11 (the Permit's own definition of MEP states that BMP's must be effective, have public support, exhibit reasonable relationship between cost and benefit achieved, and be technically feasible).

ii. The Provisions in the Permit Requiring Adherence to Numeric WQBELs Exceed Federal Requirements and Violate State and Federal Law and Policy

1. The Permit's WQBELs Were Improperly Formulated

The Regional Board failed to provide adequate justification for incorporating numeric water quality based effluent limitations ("WQBELs") in the Permit for each of the 33 incorporated Total Maximum Daily Loads ("TMDL") to which they apply. A WQBEL is an enforceable translation in an MS4 permit for attaining compliance with a TMDL Waste Load Allocation ("WLA"), which serves to protect beneficial uses of a receiving water. 40 C.F.R. § 130.2. The Permit fails to establish that an adequate requisite Reasonable Potential Analysis ("RPA") has been conducted.

The Permit fails to establish if discharges from any individual permittee's MS4 have the reasonable potential to cause or contribute to an excursion above any "State water quality standard including State narrative criteria for water quality." *See* EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs" ("EPA Memorandum"), which states:

> Where the NPDES authority determines that MS4 discharges *have the reasonable potential to cause or contribute to a water quality excursion*, EPA

> recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards.

EPA Memorandum, p. 2 (emphasis added).

There are two generally accepted approaches to conducting an RPA. According to USEPA guidance, "A permit writer can conduct a reasonable potential analysis using effluent and receiving water data and modeling techniques, as described above, or using a non-quantitative approach." NPDES Permit Writers' Manual, September 2010, page 6-23.

Neither the administrative record nor the Permit's Fact Sheet contains any evidence of the Regional Board having performed an RPA in accordance with the two foregoing approaches. Regarding the first approach, such an analysis would in any case have been impossible to perform given that no outfall ("effluent") monitoring has been required for any Los Angeles County MS4 permit since the MS4 program began in 1990. No modeling appears to have been conducted either. Furthermore, the absence of any reference to WQBELs or RPA in any of the Regional Board's TMDL documents counters its assertion that the TMDL development process satisfied the RPA requirement for establishing a numeric WQBEL in this instance.

Beyond this, federal regulations not only require that an RPA be performed to determine an excursion above a water quality standard, but also that the storm water discharge must be measured against an "allowable" ambient concentration. 40 C.F.R. §122.44(d)(iii).

While wet and dry weather monitoring data have been generated relative to some TMDLs, such data cannot singularly serve to determine an excursion above a TMDL, even where such data does exist, which is not in every case. Outfall monitoring data would have to have been evaluated against in-stream generated ambient (dry weather) data to make such a determination. As for the second, non-quantitative approach, the Regional Board also failed to provide information in the Permit, its accompanying documents, or the administrative record indicating that it had performed a non-quantitative analysis based on recommended criteria described in USEPA guidance.

In lieu of conducting either a quantitative or non-quantitative RPA, the Regional Board concluded that reasonable potential can be demonstrated in several ways, one of which is through the TMDL development process. Fact Sheet, p. F-34. No citation to any authority was provided for this proposition. In essence, the Regional Board appears to claim that the same analysis it used to establish a TMDL constitutes a type of RPA. The logic it used to arrive at this conclusion is, however, faulty. A WQBEL is a means of attaining a TMDL WLA, a translation of a WLA into prescribed actions or limits which has in the past been typically expressed as a BMP. Before a WQBEL can be developed, however, a need for it must be established. As the Writers' Manual points out:

> The permit writer should always provide justification for the decision to require WQBELs in the permit fact sheet or statement of basis and must do so where required by federal and state regulations. *A thorough rationale is particularly important when the decision to include WQBELs is not based on an analysis of effluent data for the pollutant of concern.*

NPDES Permit Writers' Manual, September 2010, page 6-23 (emphasis added).

No such rationale is provided in the Regional Board's Fact Sheet, which in the absence of effluent data derived from outfall monitoring, would have been absolutely necessary to justify the need for a numeric WQBEL. It is possible that outfall monitoring could demonstrate that existing BMPs implemented through a MS4 permittee's storm water management plan is already meeting a TMDL WLA, thereby obviating the need for any WQBELs. But that was not done, and simply translating a TMDL WLA directly into a numeric WQBEL without the requisite analysis is a clear violation of permit-writing standards, applicable law and good practice.

Furthermore, and finally, the EPA Memorandum is clear that reliance on numerics should be coupled with the "disaggregation" of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit fails to adequately disaggregate storm water sources within applicable TMDLs regarding numeric WQBELs and for receiving water limitations, further making the imposition of numeric standards inappropriate.

2. The Permit's Numeric WQBELs Violate the Requirements of Law Because They are Infeasible

The Regional Board's numeric WQBELs are not feasible. The 2010 EPA Memorandum recommends "*where feasible*, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards." EPA Memorandum, p. 2 (emphasis added). This position is based on 40 CFR §122.44(k), which authorizes the use of BMPs "when numeric limitations are infeasible." In 1991, the State Board concluded that "numeric effluent limitations are infeasible as a means of reducing pollutants in municipal storm water discharges, at least at this time." State Water Resources Control Board Water Quality Order 91-03, page 49.

Although this determination was made over twenty years ago, the State Board's position on this issue has not changed since then, as evidenced by its adoption of the Caltrans MS4 permit in September of 2012. Citing the fact sheet for the Caltrans MS4 permit, the State Board affirmed that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." Fact Sheet for NPDES Permit and Waste Discharges Requirements for State of California Department of Transportation, NPDES Permit No. CAS000003, Order No. 2012-XX-DWG, September 7, 2012, page 9.

The Caltrans MS4 permit's fact sheet also supports the use of BMP-based WQBELs as a means of meeting TMDLs and other quality standards. The Caltrans MS4 permit is also subject to TMDLs adopted by the Regional Board and USEPA. If this aspect of the Permit is not corrected, Los Angeles County MS4 permittees will be compelled to comply strictly with numeric WQBELs and receiving water limitations while Caltrans need only implement WQBEL BMPs to achieve compliance with the same TMDLs. This inconsistency lacks any justification.

In addition, when comparing the Permit to the General Industrial and General Construction Storm Water Permits that are within the Petitioner's MS4 (but are the primary enforcement responsibility of the Regional Board), the Permit clearly imposes excessive, unfair, and infeasible requirements onto the Petitioner. Imposing general BMP-based WQBEL compliance requirements onto a General Industrial and General Construction Storm Water permittee's discharge while imposing enforceable numeric WQBELs on to the Petitioner who is receiving the discharge is plainly unjustifiable. Here again, if this aspect of the Permit is not corrected, the Petitioner

will be compelled to comply strictly with numeric WQBELs and receiving water limitations while General Industrial and General Construction Storm Water permittees need only implement BMP based WQBELs to achieve compliance.

Moreover, the Permit allows the use of BMPs to meet federal TMDLs. Having two different compliance standards, one for State adopted TMDLs that require meeting numeric WQBELs and one for USEPA adopted TMDLs that require BMP-based WQBELs is improper and inappropriate. Furthermore, while the State may impose requirements more stringent than federal regulations, it must provide a justification and conduct required analysis that has not been done in the Permit, its accompanying documents, or elsewhere in the administrative record. Water Code § 13241; *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

b. Various TMDLs and TMDL Requirements Incorporated into the Permit Are Contrary to State and Federal Law and Policy

Various TMDLs incorporated into the Permit establish compliance with WLAs in the receiving water contrary to Federal storm water regulations and State Law. In addition to complying with TMDL WLAs at the outfall, the Permit also improperly requires compliance with TMDL WLAs (dry and wet weather) in the receiving water as a "limitation."

Examples include, but are not limited to, the metals TMDLs for the Los Angeles River adopted by the State, the metals TMDL for the San Gabriel River adopted by USEPA, the Los Angeles River Bacteria TMDL and the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants. The affected TMDLs all require in-stream monitoring to determine compliance with waste load allocations.

As will be addressed further below, Federal regulations only require two types of monitoring – effluent and ambient – for compliance: "The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards." 40 C.F.R. §122.44(d)(viii)(B).

USEPA defines effluent as outfall discharges. Ambient monitoring is defined by USEPA to mean the "natural concentration of water quality constituents prior to

mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impacts to human health." *See* EPA Glossary of Terms (http://water.epa.gov/scitech/datait/tools/warsss/glossary.cfm).

All TMDLs and other water quality standards are supposed to be ambient standards, as the noted in a USEPA commissioned report: "EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution."[2]

Although some of the TMDLs specify ambient monitoring such as the Los Angeles River Metals and Bacteria TMDLs, the Regional Board has misunderstood ambient monitoring to be a form of in-stream compliance monitoring, along with TMDL effectiveness monitoring. For example, the Los Angeles River Metals TMDL requires Los Angeles County MS4 permittees and Caltrans to submit a Coordinated Monitoring Plan ("CMP"), which includes both "TMDL effectiveness monitoring and ambient monitoring."[3]

The CMP that was submitted to and approved by the Regional Board proposed a monitoring plan that essentially treats TMDL effectiveness monitoring and ambient monitoring as being one of the same, and which collectively serve the purpose of determining compliance with dry and wet weather WLAs based on in-stream monitoring.

It is unclear why the Regional Board established two compliance standards, one of which (*viz.*, wet weather WLAs) is clearly not authorized under federal law. One explanation is that it did so because previously adopted TMDLs, some of which date back a few years, assumed that compliance would be determined by in-stream monitoring. The Regional Board was either not aware or ignored, at the time of the TMDLs adoption, that attainment of waste load allocations should be determined by

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[2] National Research Council, Assessing the TMDL Approach to Water Quality Management Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science and Technology Board, page 12.
[3] Total Maximum Daily Loads for Metals and Los Angeles River and Tributaries, U.S. Environmental Protection Agency, Region 9, California Regional Water Quality Control Board, Los Angeles Region, May 27, 2005, page 79.

outfall monitoring. More recently-adopted TMDLs, such as the Machado Lake Nutrients TMDL, do not require compliance in the receiving water (the lake in this case), but instead compliance at the outfall. The Regional Board has not explained why certain TMDLs are required to comply at the outfall while others are required to comply in the receiving water.

The purpose of ambient monitoring is to evaluate the health of receiving waters determined during normal states – not when it rains. State-sponsored Surface Water Ambient Monitoring Programs (SWAMPs) recognize that ambient monitoring is only performed during dry weather. As mentioned above, ambient monitoring sets a reference point against which storm water discharges are measured to determine attainment of water quality standards. While the State and federal-adopted TMDLs call for both dry and wet weather WLAs, federal regulations do not recognize either. It is the ambient standard that is supposed to operate as a TMDL WLA.

c. The Regional Board Failed to Adequately Consider Economic Impacts Pursuant to Water Code Section 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13623 requires the Regional Board to include "[e]conomic considerations" under Water Code Section 13241 with its consideration of the Permit. The Regional Board incorrectly asserts that consideration of economics is not required in this Permit. *See* Permit, p. 26. Because, as demonstrated above and throughout, the Permit requirements exceed the Federal MEP standard for storm water permits in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Permit's economic analysis uses the 2001 permit as its basis. Accordingly, the Permit fails to take into account 33 new TMDLs, new Minimum Control Measures ("MCMs"), Watershed Management Programs, and the loss of the County of Los Angeles as principal permittee, among other factors.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not

even been approved, much less voted on by the public. *See* Permit, Fact Sheet, p. F-153. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should have delayed its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the co-permittees will be left to implement the Permit's requirements without these much-needed funds. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for certain compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

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

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

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

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

The relevant portions of Water Code Section 13383 state:

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

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

The Permit goes far beyond a requirement that a permittee "monitor" the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request "other information", such requests can only be "reasonably" imposed. Cal. Water Code § 13383(b). The Permit requires co-permittees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108. The monitoring program also exceeds federal requirements which, in line with state requirements, do not require monitoring beyond the MS4. *See* 40 C.F.R. §122.26.

e. Provisions in the Permit Imposing Joint or Joint and Several Liability for Violations are Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. The Permit states that "Permittees with co-mingled MS4 discharges are jointly responsible for meeting the water quality-based effluent limitations and receiving water limitations assigned to MS4 discharges in this Order." Permit, p. 23. The Permit then states that permittees are responsible for implementing programs within their jurisdictions "to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such commingled MS4 discharges." *Id.*

It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party to an MS4 Permit is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because

the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the CWA directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the CWA.

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

Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. Yet, by stating that the Permit "allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving water limitations," that is precisely what the Permit does. Permit, p. 24. Such a reversed burden of proof is contrary to law, and illicitly creates a presumption of "guilty until proven innocent." *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The Regional Board has the burden of proof to establish a CWA violation, and requiring permittees to prove a negative in the case of a commingled discharge is unfair and unlawful. *Rapanos v. United States*, 547 U.S. 715, 745 (2006); *Sacket v. E.P.A.*, 622 F.3d 1139, 1145-47 (9th Cir. 2010) ("We further interpret the CWA to require that penalties for noncompliance with a compliance order be assessed only

after the EPA proves, in district court, and according to traditional rules of evidence and burdens of proof, that the defendants violated the CWA in the manner alleged in the compliance order.")

f. The Permit Improperly Intrudes on Permittees' Local Land Use Authority

To the extent that this Permit relies on federal authority under the CWA to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment,"[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

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

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

The Permit essentially establishes the Regional Board as a "super municipality" responsible for setting zoning policy and requirements throughout Los Angeles County. In response to this objection, the Regional Board stated that "the permit does not impose land use regulations, nor does it restrict or control local land-use decision-making authority. Rather, the Permit requires the permittees to fulfill

CWA requirements and protect water quality in their land use decisions." Responses to Comments H-53. This is simply not the case, as the permit improperly imposes numerous mandatory land use requirements, including but not limited to the adoption of low impact development ("LID") ordinances. *See, e.g.,* Ex. A at pp. 96-115 (Planning and Land Development Program).

g. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter Into Contracts and Coordinate With Other Co-permittees

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

h. Various Aspects of the Permit's Non-Stormwater Discharge Provisions Are Inconsistent with Federal Law and Contrary to State Law

The Permit contains a significant revision to non-stormwater discharge prohibitions: "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges *through* the MS4 to receiving waters ..." Permit, p. 27. The previous 2001 permit, however, required MS4 permittees to "effectively prohibit non-storm water discharges *into* the MS4." The previous Permit also provided for several exceptions of non-stormwater discharges that could be legally discharged to the MS4. Non-stormwater discharges that were not exempted were deemed illicit discharges. The adopted Permit, on the other hand, revises the non-stormwater discharge prohibition by replacing "to" the MS4 with

"through" the MS4 and in the case of TMDL discharges "from the MS4" to a receiving water.

The Regional Board's revised non-stormwater provision is not authorized under Federal storm water regulations. Nevertheless, the Regional Board attempts to rely on 40 C.F.R. §122.26(a)(3)(iv) to assert that an MS4 permittee is only responsible for discharges of storm water and non-storm water from the MS4. The Regional Board's citation mentions nothing about permittees being responsible for storm water and non-stormwater from the MS4. Instead, it states that co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewer system. But the term "discharges" as used in the regulation refers to storm water discharges only.

To the contrary, Section 402(p)(B)(ii) of the CWA, clearly specifies that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." Nothing in this section or anywhere else in the CWA authorizes a prohibition of non-stormwater discharges "through" or "from" the MS4. In fact, the Regional Board cites no legal authority either in the Permit or the Fact Sheet to support changing the discharge prohibition from "to" or "into" the MS4 to "through" or "from" the MS4. By doing do, the Regional Board has illicitly expanded the non-stormwater discharge requirements beyond their permissible or reasonable scope, and beyond the MEP standard.

Additionally, the Permit improperly defines non-stormwater to expansively include all dry-weather runoff. This is contrary to State and Federal definitions of storm water, which include "surface runoff," "drainage," and "urban runoff." 40 C.F.R. § 122.26(b)(13); *see also* State Water Board Order No. 2001-15, pp. 7-8. This further expansion of the non-stormwater provisions exceeds the Federal requirements and places an additional, unfair burden on permittees forced to try to prohibit these discharges.

i. The Timing and Procedures of the Permit Adoption Were Contrary to Law and Deny the Permittees' Due Process Rights

The period provided to review and comment on the Permit was unreasonably short given the breadth of the Permit. Furthermore, the "dual" procedure the Regional Board adopted whereby part of the Permit could be discussed on October 4 and 5, 2012, without the benefit of seeing a revised draft tentative Permit or responses

to comments, and then only allowing comments on "changes" to the Permit at the November 8, 2012 hearing, unreasonably limited the ability of the permittees to comment on the Permit as a whole based on the changes to the permittees' original comments. *See* Regional Board 9/26/12 "Order on Proceedings." By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the CWA, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.")

j. The Regional Board's Forced Recusal of Board Member Mary Ann Lutz was Improper and Prejudiced the Municipal Permittees

Ms. Lutz was, at the time of the hearings, the Board member appointed to reflect the perspective of municipal governments. She was improperly forced by the Regional Board to recuse herself from the proceedings. By improperly forcing her recusal, the Regional Board staff and counsel purposefully and unduly prejudiced the municipal permittees by denying the Board, the permittees, and the public Ms. Lutz' valuable perspective as a municipal representative, public servant and Mayor.

k. The Permit as a Whole Constitutes an Unfunded State Mandate, Which Is Not Permitted by the California Constitution Unless Funding is Provided by the State

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

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

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

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

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees;
- The public information and participation program;
- The industrial/commercial facilities program;
- The public agency activities program; and
- The illicit connection and illicit discharge elimination program.

See Permit, p. 69-143.

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

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

ii. The Permit's Imposition of Numeric Standards Render it an Unfunded Mandate

If strict compliance with numeric state water quality standards is required in the form of WQBELs and Receiving Water Limitations, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided to help meet targets. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the CWA and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

8. Statement that the Petition Has Been Sent to the Regional Board

A copy of this Petition is being served upon the Executive Officer of the Regional Board.

9. Statement that Issues/Objections Were Raised Before the Regional Board

The substantive issues raised in this Petition were all raised to the Regional Board before the Regional Board acted on November 8, 2012.

10. Service of Petition

This Petition is being served upon the following parties via electronic mail:

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
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Sacramento, CA 95812-0100
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jbashaw@waterboards.ca.gov

California Regional Water Quality Control Board
Los Angeles Region
Samuel Unger, Executive Officer
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sunger@waterboards.ca.gov

11. Conclusion

For the reasons stated herein, Petitioner has been aggrieved by the Regional Board's action in adopting the Permit. Issues raised in this Petition, however, may be resolved or rendered moot by Regional Board actions or developments in other jurisdictions. Accordingly, until such time as Petitioner requests the State Board to consider this Petition, Petitioner requests the State Board hold this Petition in abeyance.

Very truly yours,

Andrew J. Brady
City of Monrovia

Enclosure

cc: Samuel Unger
Laurie K. Lile
Ron Bow
Heather Maloney
Craig A. Steele

City of MONROVIA 1887

Office of the City Manager

July 20, 2012

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

Mr. Ivar Ridgeway
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SUBJECT: Comments to the Los Angeles Regional Water Quality Control Board's Tentative Order No. R4-2012-xxx, NPDES Permit No. CAS004001

Dear Mr. Ridgeway:

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

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

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

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

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

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

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

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

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

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

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

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

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

A BMP-based approach should be utilized in the Permit for final wasteload allocations and as a definitive method of compliance for all Permit requirements, as outlined in EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." ("EPA Memorandum"). *See also* 40 C.F.R. § 122.44(k).

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

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

Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability. Furthermore, the process that the Permit calls for permittees to monitor exempted discharges to determine if they are a significant pollutant source is overly onerous, costly, and puts permittees in a position of undue liability.

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

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

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

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

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

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

4. The Permit Constitutes an Unconstitutional Unfunded Mandate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The relevant portions of Water Code Section 13383 state:

> "(a) The . . . regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements . . . for any person who discharges, or proposes to discharge, to navigable waters. . . .
>
> (b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required."

The Permit goes far beyond a requirement that a permittee "monitor" the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request "other information",

such requests can only be "reasonably" imposed. Cal. Water Code § 13383(b). The information requested by the Regional Board is unreasonable. It is not just limited to each individual copermittee's discharge. Rather, the Permit requires copermittees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108.

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

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

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

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

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

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

after the deadline for a majority of the compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

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

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

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

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

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

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

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

Sincerely,

Laurie K. Lile
City Manager, City of Monrovia

Enc. LA Permit Group Comment Letter

cc: Heather Maloney, Senior Management Analyst
Ron Bow, Director of Public Works
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LA PERMIT GROUP

July 23, 2012

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

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

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

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

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

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

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

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

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

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

Receiving Water Limitations

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

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

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

Creation of Unwarranted Liability

The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 Permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*[1] (*NRDC v. County of LA*) that determined that a municipality is liable for Permit violations if its discharges cause or contribute to an exceedance of a water quality standard. This represents a fundamental change in interpretation of policy and contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated this collective understanding that a violation of the Permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm[2]. In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater Permittees would be considered to be in non-compliance with their NPDES Permits. Accordingly, municipal stormwater Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Basically, the draft Order language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Total Maximum Daily Loads

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

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

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

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

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

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

Numeric Effluent Limitations for Final TMDL WLAs

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

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

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

Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds[6]. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period. The draft stormwater Permit for CalTrans also states "Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 Code of Federal Regulations section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water Permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP. To assist in determining if the BMPs are effectively achieving MEP standards, this Order requires effluent and receiving water monitoring. The monitoring data will be used to determine the effectiveness of the applied BMPs and to make appropriate adjustments or revisions to BMPs that are not effective." The LAPG requests similar consideration as the Draft Order is a much more variable and complicated MS4 than CalTrans.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES Permits[7]. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has discretion in how WLAs are incorporated into a MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.

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

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

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

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

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

TMDLs Where Compliance Date Has Already Occurred

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

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

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

Recommendation:

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

Monitoring

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

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

expensive monitoring at the outfalls. Furthermore, recent Department of Pesticide Regulations[8] has severely limited the use of pyrethroid based pesticides, thus calling into question the need for expensive toxicity monitoring, especially at outfalls. And finally, should a study be deemed necessary, the Regional Board should lead this study.

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

Minimum Control Measures

In order to further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. This is accomplished through integrated watershed planning and monitoring. This strategy has been requested by the LA Permit Group as it will allow Permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear from a read of Provision VI.C.1.a (page 45) that the Board also supports this approach. We believe the opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to develop and implement stormwater programs that will result in environmental improvement. **We, however, suggest that the Permit ultimately establish criteria that will be used to support any customization of MCMs.** The criteria should be comprehensive but flexible. We suggest some flexibility in the criteria because the management of pollutants in stormwater is a challenging task and that the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors[9]. This constraint, as well as USEPA position[10] that the iterative process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing MCMs. **Also, for clarification, the terms of adaptive management approach and the iterative approach need to be defined as equivalent and that they can be used interchangeably.**

Timeline for Implementation

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

[8] http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf.
[9] See E. Jennings 2/11/93 memorandum to Archie Mathews, State Water Resources Control Board.
[10] See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996).

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

Shifting of State Responsibility to the MS4

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

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

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

MCMs Should Reflect Effective Current Efforts

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

New Development MCM

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

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

Storm Design Criteria

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

Alternative Compliance Option - Offsite Mitigation

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

Treatment Control Performance Benchmarks

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

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

BMP Tracking and Inspection

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

BMP Specificity

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

Hydromodification

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

Public Agency MCM

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

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

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

ID/IC MCM

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

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

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

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

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

Watershed Management Programs

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

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

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

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

Cost/Economic Implications

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

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

As previously discussed at workshops, and in comment letters, and requested by many Board Members, the economic implications of the many proposed Permit requirements are of critical importance. It is also worth noting that the cost for complying with both the stormwater regulations and TMDL requirements should be carefully considered. This point is highlighted in the March 20, 2012 memo[11] from OMB to heads of executive departments and agencies (including USEPA) which clarified Presidential Executive Order 13563. This Order requires the agencies to take into account among other things, and to the extent practicable, the costs of cumulative regulations. This is particularly relevant for this Draft Order where we have the convergence of TMDLs and stormwater regulations. Although we have not had sufficient time to assess the cost for the new stormwater requirements, the County of Los Angeles has completed an analysis (using the Los Angeles County BMP Decision Support System model) to assess the effort required to implement low impact development retrofits throughout Los Angeles County to address all TMDLs and 303(d) listings. This model roughly estimated that, to meet these water quality standards, the area would have to spend between $17 billion and

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

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

In closing, we thank you for the opportunity to comment on the Draft Order and we look forward to meeting with you to discuss our comments and to explore alternative approaches. However, we must reiterate the need for more time to review and analyze this Draft Order. In spite of the Regional Board staff statement[12] that there has been a myriad of opportunities to present our concerns and comments, we believe otherwise. The LAPG would submit that we have not had an opportunity to voice our concerns to the Regional Board members themselves as we have been limited (in some cases prevented) in responding to questions posed by the Board members during different workshops. Consequently, **we respectively request that that the Board provide another complete second draft Tentative Order with an additional review period to allow Permittees to have at least a total of 180 days to discuss and review the full document.** We believe it important to review the entire draft Permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We also believe that the Regional Board staff will be hard pressed to consider and respond to all the comments that will be submitted on the Draft Order. Thus, it is advantageous to all parties that more time is provided to craft a permit that is implementable and protective of water quality. We request the issues presented in our letter are resolved in a revised Permit draft. . Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Enc. Exhibits XX-XX

cc: LA Permit Group

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

Exhibit A

LA Permit Group

City of Agoura Hills
City of Alhambra
City of Arcadia
City of Artesia
City of Azusa
City of Baldwin Park
City of Bell
City of Bell Gardens
City of Bellflower
City of Beverly Hills
City of Bradbury
City of Burbank
City of Calabasas
City of Carson
City of Claremont
City of Commerce
City of Covina
City of Culver City
City of Diamond Bar
City of Duarte
City of El Monte
City of Gardena
City of Glendale
City of Glendora
City of Hawthorne
City of Hermosa Beach
City of Hidden Hills
City of Huntington Park
City of Industry
City of Inglewood
City of La Verne
City of Lakewood
City of Lawndale
City of Los Angeles
City of Lynwood
City of Malibu
City of Manhattan Beach
City of Monrovia
City of Montebello
City of Monterey Park
City of Paramount
City of Pasadena
City of Pico Rivera
City of Pomona
City of Redondo Beach
City of Rolling Hills
City of Rolling Hills Estates
City of Rosemead
City of San Dimas
City of San Gabriel
City of San Marino
City of Santa Clarita
City of Santa Fe Springs
City of Santa Monica
City of Sierra Madre
City of South El Monte
City of South Gate
City of Torrance
City of Vernon
City of West Covina
City of West Hollywood
City of Westlake Village

Exhibit B:

LA Permit Group Detailed Comments re: Draft Order

Document Name: **TMDL Section Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

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

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

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

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

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

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

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

Agency/Reviewer: **LA Permit Group**

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

Document Name: **Receiving Water Limitation Section Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

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

Document Name: **Additional Sections Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

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

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

Document Name: **Minimum Control Measures Draft Tentative Order - July 2012**

Agency/Reviewer: **LA Permit Group**

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

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

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

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

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

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

Agency/Reviewer: **LA Permit Group**

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

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

17	Attachment E, Page 8	IV.C.5	Revise to allow 9 months after approval of an IMP or CIMP by the Executive Officer to commence monitoring. It takes 3 months to issue Request for Proposals and award a contract for monitoring. It takes an additional 6 months to obtain permits from the Los Angeles County Flood Control District to access monitoring locations on their systems.

18	Attachment E, Page 8	IV.C.7	Both the current permit shoreline monitoring program (CI-6948) and the SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP) are being incorporated into the new permit. **The CI-6948 shoreline monitoring requirements, Section II.D – page T-11, is redundant to the CSMP.** All stations monitored in the CI-6948 are also monitored in the CSMP. Furthermore, the SMBBB TMDL specifies that the agencies are to select sampling frequency and the CSMP states that the agencies have selected weekly sampling frequency. However, CI-6948 requires several stations to be monitored up to 5 days per week and with the addition of the CSMP additional stations will be monitored two days per week. Paragraph II.D.b) of the CI-6948 shoreline monitoring section specifies that the sampling frequency at 28th Street (DHS 113), also SMB-5-2, and Herondo storm drain (DHS 115), also SMB-6-1, be increased to 5 times per week. Paragraph II.D.e) states that monitoring sites are to be monitored 5 days per week if the historical water quality is worse than the reference beach. However, no evidence was presented to the responsible agencies that this was the case for the SMB-5-2 or 6-1. An evaluation of historical data was presented by the Regional Board Staff Report for the reconsideration of the SMBBB TMDL dated May 2012. Further evaluation of this data shows that SMB-5-2 and SMB-6-1 should not be subject to the increase frequency for the following reasons: 1. Of the 67 stations being monitored as part of the CSMP, SMB-5-2 and 6-1 are ranked 57 and 43 respectively in the percent of exceedances during the summer dry weather period. 2. 37 stations being monitored only weekly or two days per week had a higher summer-dry weather exceedance percentage then SMB-6-1. 3. The Reference Beach monitoring station (SMB-1-1) had a summer dry weather period exceedance percentage of 10.2% versus 6.9% and 3.2% for SMB-5-2 and 6-1, respectively. 4. The Reference Beach monitoring station (SMB-1-1) had an average year-round exceedance percentage of 12.1% versus 14.6% and 11.4% for SMB-5-2 and 6-1, respectively. Although exceedance rate for SMB 5-2 is higher than the Reference Beach monitoring station based on year round results, it is lower during the critical summer-dry weather period. 5. Of the 8 stations being monitored five days per week SMB-6-1 and 5-2 have the lowest summer dry weather period exceedance percentage (top 6 ranged from 40.9% to 8.5% compared to 6.9% and 3.2% for SMB-5-2 and 6-1). In addition, the inclusion of both the CI-6948 shoreline monitoring program and CSMP into the permit will result in 5 (SMB-5-1, 5-3, 5-5, 6-5, and 6-6) of the other 9 monitoring stations in SMBBB TMDL Jurisdictional Groups 5 and 6 being monitored 2 days per week which is not the case for any of the other CSMP stations. For all of the above reasons, the shoreline monitoring provisions of CI-6948 should be removed from the new permit monitoring program. However, at a minimum, paragraph D.1.b) should be removed and paragraph D.1.e).(1) should be modified to remove stations S13 (SMB-5-1), S14 (SMB-5-3) S15 (SMB-5-5), S17 (SMB-6-5) and S18 (SMB-6-6). The following is proposed wording modification to Attachment E, Section IV.C.7: “7. Monitoring requirements pursuant to Order No. 01-182, except Section D.1.b) is removed and Section D.1.e).(1) is modified to removed sites S13, S14, S15, S17 and S18 of the Monitoring and Reporting Program - CI-6948, shall remain in effect until the Executive Officer of the Regional Water Board approves a Permittee(s) IMP and/or CIMP plan(s)."
19	Attachment E, Page 14	VI.C.1.b	Monitoring should be performed per approved IMP or CIMP or approved TMDL. The IMP and CIMP should identify rain gauges to use in the appropriate watershed.
20	Attachment E, Page 15	VI.C.1.d	Omit iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
21	Attachment E, Page 15	VI.C.1.d	Omit vi. This imposing of State and Federal responsibilities on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
22	Attachment E, Page 15	VI.D.1.a	Omit the requirement for “One of the monitoring events shall be during the month with the historically lowest instream flows.” This data does not exist and it would be simpler to specify the historically driest month.
23	Attachment E, Page 15	VI.D.1.b	Revise item i. and ii. to simply be on days with no measurable rain. There are sufficient days of no measurable rain in Southern California and any rain event could result in isolated stormwater run off.
24	Attachment E, Page 16	VII.A	Revise the description to include database, “The IMP and/or CIMP plan(s) shall include a map **and/or database** of the MS4 to include the following information:” GIS maps all come with database(s) that include much of the required information.
25	Attachment E, Page 17	VIII.A.2.e	Include the option to monitor “upstream of the actual outfall or downstream of a political boundary”. Sometimes the best location to do monitoring is at the next manhole downstream from a city boundary.
26	Attachment E, Page 17	VIII.B.1.a	Omit “except aquatic toxicity, which shall be monitored once per year…”. This imposing of State and responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
27	Attachment E, Page 18	VIII.B.1.b	Omit Item ii. and iii. Monitoring should be performed per approved IMP or CIMP or approved TMDL.
28	Attachment E, Page 18	VIII.B.1.c	Omit Item iv. The TMDLs will specify if TSS or SSC monitoring is required, otherwise sediments are needed for beach replenishment and the naturally occurring transport of sediments should not be regulated.
29	Attachment E, Page 18	VIII.B.1.c	Omit vi. This imposing of State responsibilities beyond Federal requirements on local municipal governments is an un-funded mandate. Please provide legal justification for this transfer of jurisdiction.
30	Attachment E, Page 19	IX.A.2	Include “natural flows” or “natural sources” as a potential source of non-storm water flow.
31	Attachment E, Page 22	IX.E.2	Revise last sentence to read, “100% of the outfalls **in the inventory** within 5 years…”

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

Exhibit C:

LA Permit Group Comment Letters re: Working Proposals

LA PERMIT GROUP

A collaborative effort to negotiate the Los Angeles County MS4 NPDES Permit

February 9, 2012

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

SUBJECT: ***LA Permit Group Comments Regarding the 1/23/12 Workshop on Monitoring and TMDLs***

Dear Mr. Unger:

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's January 23, 2012 Workshop on the proposed Monitoring and TMDL programs for the upcoming Los Angeles County MS4 NPDES permit. Detailed comments and recommendations regarding each of these programs are attached (Monitoring Program Comments – Exhibit A and TMDL Program Comments – Exhibit B). The LA Permit Group recognizes that the upcoming MS4 NPDES permit is a very difficult and complicated permit to develop, especially given the integration of many TMDLs. However; the permit must contain provisions that are economically achievable and sustainable and that will not expose permittees to unreasonable compliance issues. We look forward to continued discussion and collaboration with you and your staff in order to cooperatively develop economically achievable and sustainable permit provisions.

The LA Permit Group is a collaborative effort developed to negotiate the Los Angeles County MS4 NPDES Permit. Over 60 Los Angeles County municipalities are actively participating in the effort to develop and provide comments and recommendations throughout the MS4 NPDES Permit development process. Comments and recommendations are developed by each of the LA Permit Group's four Technical Sub-Committees (Land Development, Reporting & Core Programs, Monitoring, and TMDLs) which are then approved by the LA Permit Group; the group's consensus is represented by the Negotiations Committee. The LA Permit Group's comments and recommendations contained in Exhibits A and B of this letter have been developed by the Monitoring and TMDL Technical Sub-Committees and were approved by the LA Permit Group at our February 8, 2012 meeting.

Thank you for the opportunity to comment on the proposed Monitoring and TMDLs programs and we look forward to meeting with you to discuss our comments and recommendations presented in this letter. Please feel free to contact me at (626) 932-5577 or hmaloney@ci.monrovia.ca.us if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney
Chair, LA Permit Group

cc: LA Permit Group
Deborah Smith, Los Angeles Regional Water Quality Control Board
Renee Purdy, Los Angeles Regional Water Quality Control Board
Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
San Gabriel Valley Council of Governments
Senator Ed Hernandez

LA Permit Group
Comments on Monitoring Provisions Proposed at RWQCB Workshop on 1/23/12

The LA Permit group appreciates the opportunity to provide comments regarding the Regional Board's 1/23/12 workshop on the proposed monitoring program for the upcoming NPDES permit. The comments are organized to provide our overall general comments regarding the monitoring program and then our specific comments on the details presented in the workshop.

General Comments

In our 11/10/11 presentation to the Regional Board, The LA Permit Group identified an Integrated Watershed Monitoring Program (IWMP) approach supporting a comprehensive and focused monitoring program. Although the Board staff indicated interest in the approach, we were disappointed to see the approach was not well captured in the 01/23/12 workshop. We still would submit that the overarching monitoring program should be based on the concepts found in an IWMP (see attached proposal for an IWMP, p.5 & 6).

Regional Monitoring Programs

1. Duplicative efforts. The proposed regional monitoring programs appears to duplicate ongoing studies/activities by other permittees in southern California, thus, we question what new and useful information will be provided that is not already being developed.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and on-going regional monitoring efforts (also see our Special Comments on this issue).

Stormwater and Non-stormwater Monitoring Programs

1. Need to Promote a Watershed Approach. The proposed monitoring strategy appears to minimize instead of promote a watershed approach to monitoring and provides little insights into the water quality issues within a watershed. Instead it focuses exclusively on individual permittees.

   Recommendation: It is recommended that the monitoring program be based on a watershed and TMDL and that it:
   a. *evaluates the current conditions in impaired water bodies (identified by effective TMDLs),*
   b. *facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and*
   c. *identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4*
   d. *promotes the IWMP and provides time schedule incentives.*

   The LA Permit Group has developed a position paper that captures this fundamental strategy (see attachment). The strategy, we believe, would better serve as the framework for the monitoring program than the one currently being considered by the Regional Board.

2. Lack of Clear Goals and Objectives. The proposed strategy for stormwater and non-stormwater lacks well defined goals and management questions. Instead the strategy appears to be a resource-intensive, far reaching attempt to collect monitoring data for collection sake without any explanation as to how the data will be used to guide management decisions. The monitoring program must be designed to answer specific management questions and/or objectives. The program must provide a comprehensive but focused attempt to address a number of management

questions. Furthermore the proposed strategy isolates the stormwater/non-stormwater monitoring from other elements of the monitoring program such as receiving water and tributary monitoring. As a result it is difficult to understand the overall relationships between the various monitoring efforts and limits the Permittees' ability to direct their monitoring efforts according to local and watershed specific concerns.

Recommendation: We strongly recommend that the Regional Board revisit the stormwater monitoring programs to incorporate an integrated watershed monitoring strategy that addresses water quality management based questions and TMDLs. Similarly, we recommend that the monitoring program reflect an adaptive management approach such that we have the ability to modify our monitoring efforts as monitoring data and information are gathered.

Specific Comments

Although we have fundamental concerns with the overall approach provided in the 1/23/12 workshop and strongly recommend modifications in the approach, we have none-the-less developed specific comments on the Regional Board approach. These comments are provided below.

Regional Monitoring Programs

1. Pyrethroid Study. We suggest that the Surface Water Ambient Monitoring Program would be a better vehicle for assessing the overall impacts of pesticides (pyrethroids) in the watersheds than the MS4 stormwater programs. This is especially true since pyrethroid is a statewide issue and not just a potential Los Angeles area issue.
2. Hydromodification Study. Many municipalities discharge directly or indirectly into concrete channels thus calling into question the value of a hydromodification study for these municipalities. Furthermore, the Southern California Coastal Water Research Project (SCCWRP) has a number of studies focused on hydromodification including one that assesses the impacts of hydromodification and identifies management practices that could offset the impacts[1]. Thus we would suggest that the proposed hydromodification study for the LA permittees be eliminated and instead allow SCCWRP efforts in this area to be the base studies.
3. Low Impact Development Study. As with the hydromodification study we believe that there is already ongoing research with LID and that the proposed study for the LA permittees is unwarranted. The Southern California Monitoring Coalition had previously identified this area for research and received grant monies to assess the effectiveness of LID strategies. This work was recently conducted by the SCM. In addition, the SCM Coalition conducted a study to identify impediments to LID implementation and this study is also just now being completed. Thus we question the value of LA permittee specific studies for LID.

Recommendation: Modify the requirement for regional monitoring programs to account for existing and ongoing regional monitoring efforts.

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1 http://www.sccwrp.org/ResearchAreas/Stormwater/Hydromodification/AssessmentAndManagementOfHydromodification.aspx

Stormwater and Non-stormwater Monitoring Programs

1. Clear Logic Needed for Deciding Monitoring Efforts. The logic for both stormwater and non-stormwater monitoring efforts is confusing and in some cases appears to be in conflict. Furthermore, there appears to be little nexus between TMDLs and the proposed monitoring effort.

   Recommendation: It is absolutely necessary that a logical decision tree be developed to guide the Permittees. The development of a decision tree could be part of the integrated watershed monitoring plan.

2. Confusing objectives for non-stormwater monitoring. The proposed non-stormwater monitoring (slides 21-23[2]) does not address the stated requirement in slide 24 to determine the relative flow contribution of other permitted discharges. Also it is unclear what will be gained by the extensive monitoring effort. Furthermore the time line proposed to complete this work is woefully inadequate (9 months). If the purpose of the non-stormwater monitoring is to assess the categorical exemptions, then the current framework is inadequate.

   Recommendation: We recommend that a well defined regional study be incorporated into the IWMP that already includes flow monitoring in numerous locations to assess categorical exemptions instead of the each permittee based approach currently proposed.

3. Aquatic Toxicity Monitoring. Slide18 indicates that stormwater monitoring includes aquatic toxicity monitoring. We would submit that it is premature to conduct outfall toxicity monitoring until it has been established that toxicity is present in the receiving water. Furthermore we would submit that should toxicity monitoring be required, acute toxicity is the appropriate toxicity test given the short duration of stormwater discharges.

   Recommendation: Toxicity monitoring should be acute and be limited to the receiving water and not be a part of an outfall monitoring program unless dictated by a TMDL. Aquatic Toxicity monitoring is required by a number of TMDLs and could be extracted from IWMP.

4. Technical concerns include the following:

   a. Unclear how baseline non-stormwater flows are established.

   b. Possible conflicting criteria regarding the use of land uses to identify outfalls and the minimum number of outfalls (slides 15-16).

   c. Need better definition for "significant" non-stormwater flows. The requirement noted in slide 21 regarding 10% above the lowest rolling average needs to be evaluated more closely as it appears that all outfalls will qualify under this criteria.

[2] Slide numbers are based on Regional Board 1/23/12 presentation by PG Environmental.

d. When are field measurements and grab samples collected during a storm event? Logistically it will be difficult and costly to require grab samples in addition to the flow weighted samples. Most stormwater data are categorized as event mean concentrations which is a flow weighted composite sample. Grab samples do not reflect EMC but rather just a point in time concentrations.

e. The use of bacteria as a monitoring parameter to identify sources of sewage is questionable given bacteria is ubiquitous in our environment and difficult to track. Bacteria source tracking should be addressed in the TMDL on a case by case situation.

f. Without receiving water data the MS4 is limited in its ability to determine whether non-stormwater discharges are causing or contributing to exceedances of water quality standards. However there is no receiving water monitoring coupled with the non-stormwater monitoring.

g. The 1/23/12 presentation introduced some new as well as some not so new terms. Given the relatively early stage of development of the stormwater permitting program, it is important to clearly define these terms to avoid confusion and misunderstanding during the permit approval process. We realize that the adopted Permit will have a definition section but to assist in the permit development and adoption stage it would be useful to provide definitions upfront including the definition for outfalls, major or otherwise.

Recommendation: Conduct case studies for Torrance and the Los Angeles River watershed and others as appropriate to address a range of different conditions (e.g. size, receiving waters, TMDLs, etc.). These case studies will likely clarify the purpose and approach of the monitoring and lead to improvements in the monitoring program. Furthermore we believe it would be constructive to have PG Environmental participate in these discussions.

Closing

The LA Permit Group again appreciates the opportunity to provide these comments and look forward to working with the Regional Board especially in evaluating case studies to better craft a long term, constructive and cost effective monitoring program.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS

It is the MS4 Co-Permitees' intent to utilize Total Maximum Daily Load (TMDL) monitoring as the primary monitoring program requirement in the next MS4 Permit. The Co-Permittees support a TMDL-driven monitoring program that:

- evaluates the current conditions of recognized impaired water bodies (identified by the 303d List),
- facilitates the attainment of WLAs and assessment of effectiveness and improvement of BMPs to effectively address each impairment to the extent it is potentially contributed by the MS4, and
- identifies the extent to which the impairment may be caused by factors or sources other than discharges from the MS4

The Co-Permittees wish to work cooperatively with the assistance of outside experts, e.g., Council for Watershed Health[3] or consulting firm, to prepare Integrated Watershed Monitoring Plans to meet TMDL monitoring requirements. Currently the adopted TMDLs require each agency or subwatershed group to submit separate TMDL Monitoring and Reporting Plans and to prepare individual annual monitoring reports for each TMDL. The end result will be numerous monitoring plans that are not coordinated, with redundancies between monitoring programs, without standard sampling or analysis methods to ensure data comparability, and with the potential for data gaps, which will create a multitude of annual reports which must be reviewed by Regional Board staff that do not provide a comprehensive picture of watershed health.

The goal of Integrated Watershed Monitoring Plans would be to provide:

- TMDL objective-driven monitoring plan designs,
- comprehensive data management and reporting,
- SWAMP-compatible QA/QC and data validation,
- data synthesis and interpretation on a watershed scale, and
- single, comprehensive annual monitoring reports for each watershed addressing all the adopted TMDLs in that watershed.

Integrated Watershed Monitoring Plans will be developed and implemented for each major watershed in the County. The Co-Permittees recognize the efficiencies that can be obtained by preparing Integrated Watershed Monitoring Plans that address all TMDLs for that watershed. During the process of developing the Integrated Watershed Monitoring Plans the Co-Permittees would bring together watershed stakeholders, compile an inventory of existing or pending monitoring efforts, develop a comprehensive list of monitoring questions to address the identified watershed impairments and design coordinated monitoring programs. The provisions of the 3rd term permit Monitoring and Reporting Program and the relevant TMDL monitoring requirements will be incorporated into each Integrated

[3] The Council for Watershed Health (Council) has worked with the Wastewater Treatment Plants to prepare coordinated monitoring plans for the Los Angeles and San Gabriel River watersheds.

LA Permit Group, proposal for

INTEGRATED WATERSHED MONITORING PLANS, cont.

Watershed Monitoring Plan and the requirement for implementing individual TMDL monitoring plans would be eliminated once they have been incorporated into the approved Integrated Watershed Monitoring Plan. The Co-Permittees would need to develop a Memorandum of Understanding to contract for preparation of the Integrated Watershed Monitoring Plans and Annual Reports.

The Co-Permittees recognize the value of having Integrated Watershed Monitoring Plans to assess the extent of MS4 contribution to TMDL-listed impairments and to design and evaluate BMPs to reduce those contributions to attain WLAs, but also recognize that the same monitoring data can be used by the Regional Board to issue Notices of Violation and/or for Third Party lawsuits. Such regulatory and legal actions would be counterproductive and would obstruct the iterative adaptive process needed to efficiently and effectively improve water quality, thus the co-permittees request that the MS4 Permit language for Monitoring and TMDLs be written to require Integrated Watershed Monitoring Plans but to clearly state that so long as a Co-Permittee is carrying out its obligations in implementing measures in accordance with the provisions of an approved TMDL Implementation Plan and participating in a cooperative MOA to carry out the Integrated Watershed Monitoring Plans, that during this Permit term exceedances of Water Quality Standards, TMDL Waste Load Allocations, or Effluent Limits will not constitute a Permit violation. Integrated Watershed Monitoring Plans approved by the Executive Officer would supersede previously approved TMDL Monitoring and Reporting Plans.

Permittees that do not want to participate in the Integrated Watershed approach shall develop and/or utilize existing or future TMDL monitoring plans and schedules. Existing TMDLs should have the option to be included in the Integrated Watershed approach, and resulting timeframe adjustments, if they so chose.

LA Permit Group
Draft Comments on TMDL Provisions Proposed at RWQCB Workshop on 1/23/12

The Los Angeles Permit Group appreciates the opportunity to provide input to RWQCB staff on the elements of TMDL WLA incorporation into the MS4 permit as provided in the presentation and handouts during the workshop on 1/23/12.

The group supports many of the concepts outlined in the presentation, particularly the multiple methods of demonstrating compliance, which includes the implementation of rigorous implementation plans using an adaptive management strategy as a method of compliance. However, the group has a few key concerns with the proposal that we would like to share.

Reasonable Assurance Plan

We request that the Reasonable Assurance Plan (RAP) not be used as the mechanism for identifying the BMPs that will be used to comply with the TMDL WLAs. Rather, we request that the requirements to meet TMDL WLAs be incorporated into the Stormwater Quality Management Plan, as described below.

1. Stormwater Quality Management Plans, based on the TMDL implementation plans and other elements, can be developed with a watershed/sub watershed based or individual permittee approach rather than a "one size fits all" approach.

    a. Permittees shall develop a process to evaluate BMPs that will fall under one or more of the following categories:

        i. Operational source control BMPs that prevent contact of pollutants with rainwater or stormwater runoff;
        ii. Runoff reduction BMPs;
        iii. Treatment control BMPs where effectiveness information is available;
        iv. True source control BMPs that eliminate or greatly reduce a potential pollutant at the original source pursuant to a legislative or regulatory time schedule; or
        v. Research and development for pollutant types where effective BMPs have not been identified.

    b. These categories will be incorporated as part of the Stormwater Quality Management Plans.

    c. Stormwater Quality Management Plans will identify effective BMPs to be implemented in an iterative manner to attain the WLAs based on the design storm.

2. Stormwater Quality Management Plans designed to attain the TMDL WLAs will include:

    a. specific, targeted steps scheduled to attain the WLAs through the use of BMPs;
    b. specific procedures for evaluating BMP effectiveness; and
    c. provisions for special studies if needed.

The Stormwater Quality Management Plans can incorporate BMPs identified in implementation plans to address the TMDL requirements.

TMDL Compliance

Our second, and primary concern, is the way in which compliance with TMDL permit provisions is being discussed. It is our understanding from the presentation, that at the end of a TMDL implementation schedule, if a permittee is not meeting the numeric values assigned as WLAs in the TMDL, the permittee will be considered out of compliance with the permit requirements. We have significant concerns with this approach to developing the permit for a number of reasons.

It is our understanding that this approach would result in the inclusion of numeric effluent limitations as the mechanism for incorporating the TMDL WLAs. For those TMDLs whose compliance dates have passed, permittees would be considered in violation of the permit if they are not meeting the numeric effluent limitations from the moment the permit is effective. If warranted, the Regional Board would use a Time Schedule Order (TSO) to provide some additional time for coming into compliance. If this is the proposed approach, in essence, the permittees would be going from complying with the current permit that includes only a few TMDL requirements to potentially being out of compliance for requirements that have never been in their permit.

Permittees are planning on taking actions as outlined in the Stormwater Quality Management Plan above to make significant progress towards improving water quality. However, we have concerns that requirements being proposed go beyond MEP given the economic and staff resources available to achieve the WLAs for an unprecedented number of TMDLs being incorporated into this permit. These concerns are based on a number of factors including but not limited to:

- TMDLs were developed using inadequate data with the intent that TMDL provisions would be revised through TMDL reconsiderations and special studies. Most of the TMDLs have not been reconsidered.
- Other sources may prevent attainment of standards in the receiving water no matter what actions are taken by the MS4 permittees.
- Many WLAs cannot be met within the permit term.
- Regulation of the sources of some pollutants are outside of MS4 permittees control.
- The design storm has not yet been defined and implementation of BMPs to ensure compliance under all conditions, including extreme storm events, could be extremely costly and technically infeasible.

Although we recognize that additional requirements and rigor need to be added to the permit to address TMDLs, we feel that there are straightforward ways to do this that do not represent such a significant shift in the regulation of stormwater discharges and place dischargers into an untenable situation of potentially being out of compliance with their permit from the effective date.

To address these concerns, the group would like to propose the following approach for compliance with TMDL WLAs.

1. Implement TMDL WLAs as BMP-based water quality based effluent limitations (WQBELs) in the permit. This is consistent with federal regulations (40 CFR 122.44(d)(1)(vii)(B) which require inclusion of effluent limits, defined at 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from

"point sources"", which are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA."

2. Define BMP-based WQBELs as "Implementation of BMPs included in a Regional Board Executive Officer approved Stormwater Quality Management Plan. The Stormwater Quality Management Plan (SQMP) shall describe the proposed BMPs and the documentation demonstrating that when implemented, the BMPs are expected to attain the WLAs, and a process for evaluating BMP effectiveness and implementing additional actions if necessary to meet the TMDL WLAs." This is consistent with other recently adopted permits in California and with the requirements as described in the 1/23/12 RWQCB presentation.
3. Consistent with the four methods for demonstrating compliance with TMDLs as presented in the 1/23/12 RWQCB presentation, a co-permittee which is achieving WLAs at the outfall (or equivalent point of compliance within the drainage system) or in receiving waters may cease implementing additional BMPs if appropriate.
4. Violations of the BMP based WQBEL provisions would consist of the following provisions, in keeping with the 1/23/12 RWQCB presentation:
    a. Not submitting the SQMP.
    b. Not implementing all elements of the SQMP in accordance with the approved schedule.
    c. Not implementing additional BMPs or revising the SQMP per the process outlined in the SQMP or on schedule.

We can provide example permit language to help expand upon the approach outlined above. We appreciate your consideration of this approach and would like to meet to discuss these important issues related to TMDLs.

Additional Comments on the Proposed Text

In addition to the general topics outlined above, we have some concerns about the draft language that was provided for the TMDLs. First, we request that a non-trash example be provided to allow a better understanding of how compliance will be determined for constituents that do not have a clear method of determining compliance outlined in the TMDL. Additionally, we feel that some of the language proposed is not consistent with the approach outlined in the presentation. We have highlighted the language of potential concern below.

Part 7. Total Maximum Daily Loads (TMDLs) Provisions

The second bullet states "The Permittees shall comply with the following effluent limitations and/or receiving water limitations..." This is followed by tables with the numeric WLAs.

We have three concerns with this language:

1. The language implies that the effluent limitations are strictly numeric.
2. The language does not include any reference to how compliance will be determined, with the exception of the trash TMDL.
3. The language refers to both effluent limitations and receiving water limitations for the Santa Clara River Bacteria TMDL. We feel this does not accurately reflect the language in the TMDL and creates confusion related to the receiving water limitations outlined in a separate portion of the document.

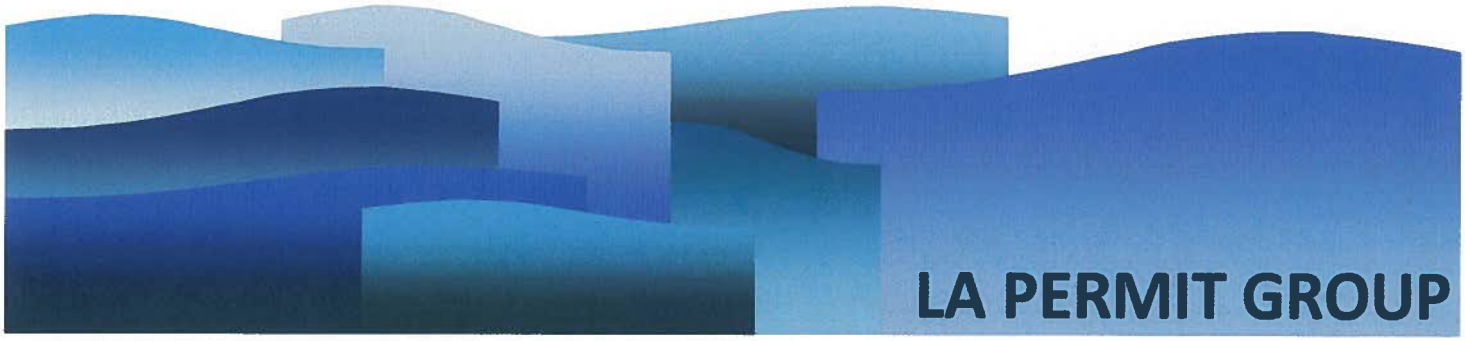
We feel that these concerns could be addressed through the approach outlined above for incorporation of TMDL WLAs.

MS4 Permit Provisions to Implement Trash TMDLs

We appreciate the incorporation of language to define alternative methods of compliance (i.e. full capture) and hope to see similar language for other constituents. However, we feel that some minor language modifications may be necessary to clearly show the linkage and ensure the permit is clear.

In B. (1)(d) Language regarding compliance through an MFAC program is not clearly defined. We feel that the language should clearly state that the permittee is deemed in compliance through implementing an approved MFAC program.

In B.(2), the language discussing violations of the permit should reference the previous section where compliance is defined.



May 14, 2012

Renee Purdy
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VIA EMAIL - rpurdy@waterboards.ca.gov

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VIA EMAIL - iridgeway@waterboards.ca.gov

SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Watershed Management Programs, TMDLs and Receiving Water Limitations

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Watershed Management Programs, Total Maximum Daily Loads, and Receiving Water Limitations. These documents were posted on the Regional Board website on April 23, 2012. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our highest priorities on the Watershed Management Program, TMDLs and Receiving Water Limitations are:

- Provide additional time to develop the Watershed Management Program to integrate the 32 TMDLs and prioritize efforts.
- Prior to adopting the Los Angeles MS4 NPDES Permit, reopen TMDLs for reconsideration where final compliance periods have passed and initiate the Basin Plan Amendment process to extend compliance deadlines to coordinate with the Watershed Management Program and consider substantial amounts of new information available. While the TMDL reopeners are pending, an affected Permittee would be in compliance through the implementation of core programs and implementation plans.
- Initiate TMDL reopeners/reconsideration where compliance with a waste load allocation (WLA) is exclusively set in the receiving water to also include compliance at the outfall, or other end-of-pipe; while the TMDL reopener is pending, an affected Permittee would be in compliance with the receiving water WLA through the implementation of core programs and implementation plans.
- Develop Receiving Water Limitation language that supports implementing the Watershed Management Programs without unnecessary vulnerability.

- All compliance points (interim WLA, milestones, and final WLA) for all TMDLs should allow for compliance timelines and actions consistent with the Watershed Management Programs that will be developed, rather than with strict numeric limits to determine compliance.

As noted in discussions with you, the LA Permit Group requested additional time to review the working proposals presented at the May 3, 2012 Regional Board Workshop. Given the brief comment deadline, there are significant, additional concerns that could not be fully explored or analyzed. Prior to issuing a tentative order, a complete administrative draft is needed to provided stakeholders (with a minimum 30 day review period) to allow the permittees to fully see how the various provisions of the permit will work together in order to gain a holistic view of the permit. This is essential in order to address the unprecedented policies and actions anticipated in the Los Angeles MS4 NPDES Permit.

These topics are further highlighted below. Detailed comments are attached for each Watershed Management Program, Receiving Water Limitations and TMDLs.

Watershed Management Programs

Overall, the LA Permit Group supports the Regional Board's proposed approach to address high priority water quality issues through the development and implementation of a watershed management program. We believe the working proposal provides sufficient detail to guide the development of the programs without being overly prescriptive and constraining. However, one of our biggest concerns with the working proposal is the proposed timeline for developing the watershed management programs. As noted in the working proposals and the workshop, municipalities would have only one year to develop a comprehensive watershed management program. This is insufficient time to organize the watershed cities and other agencies, develop cooperative agreements, initiate the studies, calibrate the data, draft the plans, and obtain necessary approvals from political bodies. As a comparison, the City of Torrance required two years to prepare a comprehensive water quality plan that addressed a suite of TMDLs, similar to what is being considered in the watershed management program. The permit should provide that the time schedule for submittal of the Draft Plan be 24 months after permit adoption.

We also offer the following comments regarding the watershed management program (our line item by line item review and comments are attached):

- The working proposal seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee's control.
- Reasonable assurance necessitates closer integration with TMDL and storm water monitoring programs. Currently the working proposal does not provide a sufficient tie-in between the monitoring and the watershed program. This lack of tie-in was acknowledged in the workshop by Board staff. It is expected that this tie-in will be addressed once the monitoring provisions are drafted.
- The watershed plan is obviously tied closely with the TMDLs which is reasonable and constructive. But we would suggest that staff broaden the definition of water quality issues to consider protection of and impacts to existing ecosystems in the analysis.
- More careful consideration should be given to the frequency and extent of the reporting and adaptive management assessments. The current proposal results in a significant annual effort and the LA Permit Group members question the value of such an effort. Current reporting appears to overwhelm state staff resources without providing the state with usable feedback on the significant efforts about our programs. We believe that the reporting can be streamlined and that the jurisdictional and watershed reporting should be combined.

- It is unclear how program implementation and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose todevelop a watershed management program, the LA Permit Group requests that current, significant efforts in our existing programs and implementation plans be allowed to continue while we evaluate new MCMs as part of the watershed management program.
- Consideration of the technical and financial feasibility of complying with water quality standards should be included in the watershed management program.

Total Maximum Daily Loads

Of critical importance to this permit and to water quality is the incorporation of TMDLs into the NPDES permit. This NPDES permit proposes to incorporate more TMDLs than any other permit in California issued to date. As a result, the manner in which the TMDLs are incorporated into the permit is a critical issue for the LA Permit Group and will likely set a significant precedent for all future MS4 permits.

The rate of development of TMDLs in the Los Angeles Region was unparalleled in California, and likely the nation. A settlement agreement necessitated the much accelerated time schedule for these TMDLs. The TMDLs were developed based on the information available at the time, not the best information to identify or solve the problem. As a result, the sophistication of the TMDLs vary widely, meaning that not all TMDLs are created equal regarding knowledge of the pollutant sources, confidence in the technical analysis, availability of control measures sufficient to address the pollutant targets, etc. Additionally, the majority of the TMDLs were developed with the understanding that monitoring, special studies, and other information would be gathered during the early years of the TMDL implementation to refine the TMDLs. As such, many MS4 dischargers were told during TMDL adoption that any concerns they may have over inaccuracies in the TMDL analysis would be addressed through a TMDL reopener. The proposed method of incorporating TMDL WLAs, as outlined in the working proposal, does not effectively allow for addressing this phased method of implementing TMDLs, nor does it recognize the time, effort and complexities involved in addressing MS4 discharges, and it places municipalities into immediate compliance risk for permit requirements that have never been incorporated into the MS4 permit previously.

We recognize and appreciate that TMDLs must be incorporated in such a way as to require action to improve water quality. However, the permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents and consider the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.

Regional Board staff is making three significant policy decisions with regards to incorporating TMDLs into this permit that the LA Permit Group would like staff to reconsider:

1. The inclusion of numeric effluent limitations for final TMDL WLAs.
2. The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed.
3. The use of time schedule orders for EPA adopted TMDLs with no implementation plans.

The first policy decision of concern is the incorporation of final WLAs solely as numeric effluent limitations in the proposed permit language. Although staff has discretion to include numeric limits, it is not required and the use of numeric limits results in contradictions and compliance inconsistencies with the rest of the permit requirements. Court decisions (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-1167 (9th Cir. 1999)[1]), State Board orders (Order

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

WQ 2009-0008, In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, at p. 10)[2] have affirmed that WLAs can be incorporated as non-numeric effluent limitations. Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into permits to regulate storm water, and at best there could be some action level, but not numeric waste load allocations. Very little has changed in the technology and the feasibility of controlling storm water pollutants since 2006. What has changed is that a legally compelled, long list of TMDLs has been adopted in the LA Region in a very short time period.

Additionally, during the May 3, 2012 MS4 Permit workshop, Regional Board staff seemed to indicate that the basis for incorporating the final WLAs as numeric effluent limitations is EPA's 2010 memorandum pertaining to the incorporation of TMDL WLAs in NPDES permits[3]. This memorandum (which is currently being reconsidered by U.S. EPA) states that "EPA recommends that, *where feasible*, the NPDES permitting authority *exercise its discretion* to include numeric effluent limitations as necessary to meet water quality standards" (emphasis added). This statement highlights the basic principle that the Regional Board has **discretion** in how the WLAs are incorporated into the MS4 Permit. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible[4].

Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, **it is critical to use non-numeric water quality based effluent limitations for both interim and final WLAs in this permit**. The proposed Watershed Management Program will require quantitative analysis to select actions that will be taken to achieve TMDL WLAs. For the entire length of the TMDL compliance schedule, permittees will be required to demonstrate compliance with interim WLAs by implementing actions that they have estimated to the best of their knowledge will result in achieving the WLAs and water quality standards. Additionally, permittees will be held responsible for compliance with actions to meet the core program requirements of the permit. However, unless final WLAs are also expressed in this permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, and no matter what other information has been developed and submitted to the Regional Board, the permittee will be considered out of compliance with the permit requirements. And because of the structure established in this permit, the Regional Board staff will have to consider all permittees in this situation as being out of compliance with the permit provisions if the strict numeric limits have not been met, regardless of the actions

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

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

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

taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement and fiscal responsibility.

To address this issue, the LA Permit Group recommends that:

- WLAs be translated into WQBELs, expressed as BMPs and that implementation of the BMPs will place the permittee into compliance with the MS4 Permit
- The WLAs be included as specific actions (BMPs) that will be designed to achieve the WLAs
- Include language that states that compliance with the TMDLs can be achieved through implementing BMPs defined in the watershed management plan

The second major policy decision of concern is the use of Time Schedule Orders for Regional Board adopted TMDLs for which the compliance date has already occurred prior to the approval of the NPDES permit. The ideal phased TMDL implementation process whereby dischargers can collect information, submit it to the Regional Board, and obtain revisions to the TMDL requirements to address data gaps and uncertainties has not occurred. As evidenced by the number of overdue permits, the workload commitments of Regional Board staff are significant and TMDL reopeners seldom occur. Because the majority of the TMDLs have not been incorporated into permit requirements until now, MS4 permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. And now, they are expected to be in immediate compliance with new permit provisions which differ from most precedent and guidance regarding incorporation of TMDLs into MS4 permits, regardless of what actions they have taken to try and meet the TMDL requirements. This is neither fair nor consistent.

The LA Permit Group strongly believes that the adaptive management approach envisioned during TMDL development, whereby TMDL reopeners are used to consider new monitoring data and other technical information to modify the TMDLs, including TMDL schedules as appropriate, is the most straightforward way to address past due TMDLs. Some of the past due TMDLs are currently being considered for modifications and Regional Board staff should use this opportunity to adjust the implementation timelines to reflect the practical and financial reality faced by municipalities. There is no reason why the reopeners cannot reflect information gathered during the implementation period, including information that may be considered in developing the Time Schedule Orders in the future, to selectively modify time schedules in the TMDLs. Additionally, the permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the permit until the modified TMDLs become effective, or by using your discretion to establish a specific compliance process for these TMDLs in the permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.

The third policy decision of concern is the manner in which EPA adopted TMDLs are being incorporated into the permit. The draft proposal requires immediate compliance with EPA TMDL targets. The effect of this approach is to put MS4 dischargers immediately out of compliance for TMDLs that may have only been adopted in March 2012. However, the Regional Board has the discretion to include a compliance schedule in the permit for EPA adopted TMDLs should they so choose. Federal law does not prohibit the use of an implementation schedule when incorporating EPA adopted TMDLs into MS4 permits. Additionally, State law may be interpreted to require the development of an implementation plan prior to incorporation of EPA adopted TMDLs into permits. Accordingly, the LA Permit Group recommends that the working proposal be modified to include compliance schedules for EPA adopted TMDLs in the permit.

Receiving Water Limitations

The proposed Receiving Water Limitations (RWL) language creates a liability to the municipalities that we believe is unnecessary and counterproductive. The proposed language for the receiving water limitations provision is almost identical to the language that was litigated in the 2001 permit. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*[5] (*NRDC v. County of LA*) that determined that a municipality is liable for permit violations if its discharges cause or contribute to an exceedance of a water quality standard.

In light of the 9th Circuit's decision and based on the significant monitoring efforts being conducted by other municipal stormwater entities, municipal stormwater permittees will now be considered to be in non-compliance with their NPDES permits. Accordingly, municipal stormwater permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability. Fundamentally, the proposed language again exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.

The LA Permit Group would like to more fully address Board Member Glickfeld's question raised at the May 3rd workshop about how RWL language as currently written puts cities in immediate non compliance, either individually or collectively. As written, TMDLs as well as water quality standards in the basin plan would have to be specifically met as soon as this permit is adopted. Many of the adopted TMDLs include language that cities are jointly and severably liable for compliance.

While the Regional Board staff has noted that enforcement action is unlikely if the permittees are implementing the iterative process, the reality is that municipalities are immediately vulnerable to third party lawsuits as well as enforcement action by Regional Board staff. In the Santa Monica Bay, cities were sent Notices of Violation that, in essence, stated that all cities in the watershed were guilty until they proved their innocence when receiving water violations were found, in some cases miles away. The "cause and contribute" language was quoted prominently in those NOVs as justification for why the Regional Board could take such action. As another case in point the City of Stockton was sued by a third party for violations of the cause/contribute prohibition even though the City was implementing a comprehensive iterative process with specific pollutant load reduction plans. Cities will have no warning or time to react to any water quality exceedances, but still be vulnerable to third party lawsuits even when cities are diligently working to address the pollutants of concern. This will be disastrous public policy, creating a chilling affect on productive storm water programs.

It is not fair and consistent enforcement to put cities in a vulnerable situation to be determined out of compliance with water quality standards in the basin plan without time to develop a plan of action, develop source identification, and implement a plan to address the concern. With the very recent legal interpretation that fundamentally changes how these permits have been traditionally implemented, please understand that adjusting the Receiving Water Limitations language is a critical issue. Again, the receiving water limitation language must be modified to allow for the integrated approach to address numerous TMDLs within the watershed based program to solve prioritized water quality problems in a systematic way. This is a fair and focused method to enforce water quality standards.

The receiving water limitation provision as crafted in the contested 2001 Los Angeles permit is unique to California. Recent USEPA developed permits (e.g. Washington D.C.) do not contain similar limitations. Thus, we would submit that the decision to include such a provision and the structure of the provision is a State defined requirement and therefore an opportunity exists for the Regional and State Boards to reaffirm the iterative process as the preferred approach for long term water quality improvement.

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

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

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

As previously discussed at the May 3rd workshop, and requested by many Board Members, the economic implications of the many proposed permit requirements are of critical importance. The LA Permit Group will be providing the requested information in a subsequent submittal shortly. However, the short timeframe for commenting on these working proposals has precluded us from assembling the information before the comment deadline on May 14, 2012.

In closing, we thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Furthermore we respectively request that that the Board provide a complete administrative draft of the Permit to stakeholders prior to the public issuance of the Tentative Order. Overall, the comment deadline was too short to address all the potential issues and concerns with the Watershed Management Program, TMDLs, and Receiving Water Limitation sections and that there are significant, additional concerns that could not be fully explored or analyzed given the comment deadline. Thus it important to review the entire draft permit to better understand the relationship among the various provisions; this is especially true for the monitoring provision and its relationship to the watershed management program. We strongly encourage you to use your discretion on these matters to make the adjustments requested. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

Attachment A: Detailed Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit RWL, Watershed Management Program and TMDLs

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB
Board Member Maria Mehranian (Chair), LARWQCB

Board Member Charles Stringer (Vice Chair) LARWQCB
Board Member Francine Diamond LARWQCB
Board Member Mary Ann Lutz LARWQCB
Board Member Madelyn Glickfeld LARWQCB
Board Member Maria Camacho LARWQCB
Board Member Irma Munoz LARWQCB
Board Member Lawrence Yee LARWQCB
Senator Hernandez
Senator Huff

Document Name: TMDL Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment No.	Doc. Reference Page	Section	Comments	Rvwr (optional)	Author Response
1	5	B.1.c.(2)	Santa Monica Bay Beaches Bacteria TMDL (SMBBB TMDL) is currently being reconsidered. As part of that reconsideration the summer dry weather targets must be revised to be consistent with the reference beach/anti-degradation approach established for the SMBBB TMDL and with the extensive data collected over that past seven years since original adoption of the SMBBB TMDL. This data clearly shows that natural and non-point sources result in 10% exceedances during dry weather. Data collected at the reference beach since adoption of the TMDL, as tabulated in Table 3 of the staff report of the proposed revisions to the Basin Plan Amendment, demonstrate that natural conditions associated with freshwater outlets from undeveloped watersheds result in exceedances of the single sample bacteria objectives during both summer and winter dry weather on approximately 10% of the days sampled.		
1	5	B.1.c.(2)	Thus the previous Source Analysis in the Basin Plan Amendment adopted by Resolution No. 02-004 which stated that "historical monitoring data from the reference beach indicate no exceedances of the single sample targets during summer dry weather and on average only three percent exceedance during winter dry weather" was incorrect and based on a data set not located at the point zero compliance location. Continued allocation of zero summer dry weather exceedances in the proposed Basin Plan Amendment is in direct conflict with the stated intent to utilize the reference beach/anti-degradation approach and ignores the scientifically demonstrated reality of natural causes and non-point sources of indicator bacteria exceedances.		
1	5	B.1.c.(2)	Continued use of the zero summer dry weather exceedance level will make compliance the SMBBB TMDL impossible for the Jurisdictional agencies. This is also in conflict with the intent of the Regional board as expressed in finding 21 of Resolution 2002-022 "that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas".		

2		B.1.	The SMBBB TMDL Coordinated Shoreline Monitoring Plan (CSMP)was approved by the Regional Board staff and that CSMP should be incorporated into the TMDL monitoring requirements of the next MS4 Permit. The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week, thus it is highly confusing and misleading to refer to “daily monitoring". The CSMP established that compliance monitoring would be conducted on a weekly basis, and although some monitoring sites are being monitored on additional days of the week, none of the sites are monitored seven days per week.		
3		B.1.	The SMBBB TMDL is currently being reconsidered at a hearing scheduled for June 7, 2012. The 4th term MS4 Permit should incorporate the revised waste load allocations which are to be adopted at that hearing, rather than the previous basin plan amendments.		
4	5	B.1.c.(3)	Description of SMB 5-5 under Beach Monitoring Location is incorrect (and seems to have been switched with the description of SMB 5-3). SMB 5-5 is a historic monitoring location "50 yards south of the Hermosa Pier" as described in the adopted basin plan amendment and in the Regional Board approved Coordinated Shoreline Monitoring Plan. Whereas SMB 5-3 has been relocated from the historic location 50 yards south of the Manhattan Beach Pier to the zero point of the southern storm drain outfall against the strand wall under the Pier, thus an apt description of that location would be: "Manhattan Beach Pier, southern drain".		
5	1-6	B.1 throughout	This discussion in this section devoted to the SMBBB TMDL seems to create confusion regarding the meaning of the terms "water quality objectives or standards, and "receiving water limitations" and "water quality-based effluent limitations". Water quality objectives or water quality standards are those that apply in the receiving water. Water Quality Effluent Based Limits apply to the MS4. So the "allowable exceedance days" for the various conditions of summer dry weather, winter dry weather and wet weather should be referred to as "water quality-based effluent limitations" since those are the number of days of allowable exceedances of the water quality objectives that are being allowed for the MS4 discharge under this permit. While the first table that appears under this section at B.1 (b) should have the heading "water quality standards" or "water quality objectives" rather than the term "effluent limitations".		

6	5	B.1.c(3)	While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the final implementation targets to be achieved at each individual compliance location. An additional table is needed showing the responsible agencies for each individual shoreline monitoring location.		
7	6-7	B.2.	Santa Monica Bay Nearshore and Offshore Debris TMDL: An alternate compliance schedule is needed for responsible agencies that adopt local ordinances banning plastic bags, smoking in public places, and single-use expanded polystyrene by three years from the adoption date, or by November 4, 2013. Those agencies are to have a three year extension of the final compliance date, until March 20, 2023 to meet the final waste load allocations.		
8	7	B.3.	The Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4 based on estimates from limited data on existing stormwater discharges which resulted in a waste load allocation for stormwater that is lower than necessary to meet the TMDL targets, in the case of DDT far lower than necessary. EPA stated that "If additional data indicates that existing stormwater loadings differ from the stormwater waste load allocations defined in the TMDL, the Los Angeles Regional Water Quality Control Board should consider reopening the TMDL to better reflect actual loadings." [USEPA Region IX, SMB TMDL for DDTs and PCBs, 3/26/2012]		
8	7	B.3.	In order to avoid a situation where the MS4 permittees would be out of compliance with the MS4 Permit if monitoring data indicate that the actual loading is higher than estimated and to allow time to re-open the TMDL if necessary, recommend as an interim compliance objective WQBELs based on the TMDL numeric targets for the sediment fraction in stormwater of 2.3 ug DDT/g of sediment on an organic carbon basis, and 0.7 ug PCB/g sediment on an organic carbon basis.		

9	7	B.3	Although the Santa Monica Bay DDT and PCB TMDL issued by USEPA assigns the waste load allocation as a mass-based waste load allocation to the entire area of the Los Angeles County MS4, they should be translated as WQBELs in a manner such that watershed management areas, subwatersheds and individual permittees have a means to demonstrate attainment of the WQBEL. Recommend that the final WLAs be expressed as an annual mass loading per unit area, e.g., per square mile. This in combination with the preceding recommendation for an interim WQBEL will still serve to protect the Santa Monica Bay beneficial uses for fishing while giving the MS4 Permittees time to collect robust monitoring data and utilize it to evaluate and identify controllable sources of DDT and PCBs.		
10	3	C.2.c)	The Machado Lake Trash WQBELs listed in the table at C.2.c) in the staff working proposal appear to have been calculated from preliminary baseline waste load allocations discussed in the July 11, 2007 staff report for the Machado Lake Trash TMDL, rather than from the basin plan amendment. In some cases the point source land area for responsible jurisdictions used in the calculation are incorrect because they were preliminary estimates and subsequent GIS work on the part of responsible agencies has corrected those tributary areas. In other cases some of the jurisdictions may have conducted studies to develop a jurisdiction-specific baseline generation rate. The WQBELs should be expressed as they were in the adopted TMDL WLAs, that is as a percent reduction from baseline and not assign individual baselines to each city but leave that to the individual city's trash reporting and monitoring plan to clarify.		

11	3	C.2.c)	The WLAs in the adopted Machado Lake Trash TMDL were expressed in terms of percent reduction of trash from Baseline WLA with the note that percent reductions from the Baseline WLA will be assumed whenever full capture systems are installed in corresponding percentages of the conveyance discharging to Machado Lake. As discussed in subsequent city-specific comments, there are errors in the tributary areas originally used in the staff report, but in general, tributary areas are available only to about three significant figures when expressed in square miles. Thus the working draft should not be carrying seven significant figures in expressing the WQBELs as annual discharge rates in uncompressed gallons per year. The convention when multiplying two measured values is that the number of significant figures expressed in the product can be no greater than the minimum number of significant figures in the two underlying values. Thus if the tributary area is known to only three or four significant figures, and the estimated trash generation rate is known to four significant figures, the product can only be expressed to three or four significant figures. Thus there should be no values to the right of the decimal place and the whole numbers should be rounded to the correct number of significant figures.		
12	3	C.2.c)	The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills Estates was based on an assumed area of 1.22 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills Estates' consultant identified a 2.76 square mile drainage area tributary to Machado Lake from the City of Rolling Hills Estates. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 14,700 gallons per year.		
13	3	C.2.c)	The Regional Board's preliminary baseline trash generation rate for the City of Rolling Hills was based on an assumed area of 0.56 square miles multiplied by the estimated trash generation rate of 5334 gallons of uncompressed trash per square mile per year. However as explained in the City's Trash Monitoring and Reporting Plan, subsequent GIS work performed by City and County of Los Angeles and confirmed by the City of Rolling Hills' consultant identified a 1.313 square miles drainage area tributary to Machado Lake from the City of Rolling Hills. Using this corrected area and the default trash generation rate of 5334 gallons of uncompressed trash per square mile per year would result in a corrected baseline of 7004 gallons per year.		

14	3	C.3	The Machado Lake Nutrient TMDL provides for a reconsideration of the TMDL 7.5 years from the effective date prior to the final compliance deadline. Please include an additional statement as item: 3.c)(3)"By September 11, 2016 Regional Board will reconsider the TMDL to include results of optional special studies and water quality monitoring data completed by the responsible jurisdictions and revise numeric targets, WLAs, LAs and the implementation schedule as needed."		
15	4	C.5.a)	Table C is not provided in the section on TMDLs for Dominguez Channel and Greater LA and Long Beach Harbors Toxic Pollutants. Please clarify and reference that Attachment D Responsible Parties Table RB4 Jan 27, 12 which was provided to the State Board and responsible agencies during the SWRCB review of this TMDL, and is posted on the Regional Board website in the technical documents for this TMDL, is the correct table describing which agencies are responsible for complying with which waste load allocations, load allocations and monitoring requirements in this VERY complex TMDL. Attachment D should be included as a table in this section of the MS4 Permit.		
16	4-8	C.5.	The Dominguez Channel and Greater LA and Long Beach Harbor Waters Toxic Pollutants TMDL provides for a reconsideration of the TMDL targets and WLAs. Please include an additional statement as item: 4.e) "By March 23, 2018 Regional Board will reconsider targets, WLAs and LAs based on new policies, data or special studies. Regional Board will consider requirements for additional implementation or TMDLs for Los Angeles and San Gabriel Rivers and interim targets and allocations for the end of Phase II."		
17	1, 3, 15	Attach I	City of Hermosa Beach is only within one watershed, the Santa Monica Bay Watershed, and so should not be shown in italics as a multi-watershed permittee		
18	2	E.2.b.v.1.	Recommend using the same language from E.2.d.i.3 to describe the demonstration. Therefore substitute this for the current language at E.2.b.v.1: "Demonstrate that there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL."		

19	3	E.2.d.i.1.	Recommend clarifying this item by incorporating the footnote into the text and modifying this item to read as follows: "There are no violations of the interim water quality-based effluent limitation for the pollutant(s) associated with a specific TMDL at the Permittee's applicable MS4 outfall(s) which may include: a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary, a manhole or other point of access to the MS4 at a subwatershed boundary that collects runoff from more than one Permittee's jurisdiction, or may be an outfall at the point of discharge to the receiving water that collects runoff from one or more Permittee's jurisdictions."		
20	4	E.2.d.i.4.b.	Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.		
21	8	E.5.b.(c)	Recommend not listing specific water bodies in E.5.b.(c) because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. Furthermore, it is not clear why Santa Monica Bay was left out of this list since the Marine Debris TMDL allows for compliance via the installation of full capture devices.		
22	7	E.5.a.i-x	Recommend not listing specific waterbody/trash TMDLs here, but simply leave the reference to Attachments X through X to identify the Trash TMDLs. Otherwise this may have to be revised in the future. Again, Santa Monica Bay Marine Debris TMDL was not included in this list, not sure whether it was an oversight or intentional?		
23	2	E.2.b.ii	Not clear on what "discharges from the MS4 for which they are owners and/or operators" means.		
24	2	E.2.b.iii	For the "group of Permittees" having compliance determined as a whole, this should only be the case if the group of Permittees have moved forward with shared responsibilities (MOAs, cost sharing, a Watershed Management Program). It would not be fair to have one entity not be a part of the "group" and be the main cause of exceedances/violations.		

26	3	E.2.c.iii	For time schedule orders, the Burbank Water Reclamation Plant required a TSO since its interim permit limits expired, with the TSO bridging the gap between the time when the interim limits expired and when the new BWRP NPDES permit became effective. It should be noted that the Water-Effects-Ratio study was submitted in 2008 and it took the Regional Board nearly 2 years to complete its review of the study, which as a result required Burbank to request 2 1-year TSOs. Our concern with TSOs in the MS4 permit is that various efforts will be made to comply with the permit provisions and permit limits, including special studies for reopener purposes, and yet the TSO requests can either be delayed, or be limited to 1-year TSOs, placing extra burden on MS4 permittees to apply each year for the TSO, which requires a Regional Board hearing for adoption/approval.		
28	5	E.4.a	This provision states "A Permittee shall comply immediately … for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.		
29	12-13	E.5.c.i(1)	For reporting compliance based on Full Capture Systems, what is the significance of needing to know "the drainage areas addressed by these installations?" Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.		
30	7	E.5	Please clarify that cities are not responsible for retrofitting.		
31	4	E. 2. e	Please add the language from interim limits E.2.d.4 a - c to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.		

32	4	E.3	Instead of TSO, please include mechanisms that allow for time to complete Basin Plan Amendments for EPA Established TMDLs. This will protect cities from unnecessary vulnerability and allow for these TMDLs to be incorporated into the Watershed Management Programs. Incorporate permit language that will reopen the LA MS4 upon completion of the Basin Plan Amendments necessary for coordination with these programs.		
33	Santa Clara River	A. 4 c)	Please change the Receiving Water Limitations for interim and final limits to the TMDL approved table. There should be no interpretation of the number of exceedance days based on daily for weekly sampling with, especially with no explanation of the ratio or calculations, and no discussion of averaging. Please revert to the original TMDL document.		
34	1	E.2	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
35			Santa Ana River TMDLs should be removed; this TMDL is eliminated		
36	9	5.b.ii.2	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance method is followed. Explain the Regional Board's approval process for determining how institutional controls will supplement full and partial capture to attain a determination of "zero" discharge.		
37	10	5.b.ii.(4)	MFAC and TMRP should be an option available to the Los Angeles River.		
38	1 of 19	B	Substantial comments have been submitted for the Reopener of the SMBBB. Rather than restate these comments, please address these comments in the MS4.		
39	3 of 24	3.a)1	For the LA River metals. Some permittees have opted out of the grouped effort. This section needs to detail how these mass-based daily limitations will be reapportioned.		
40	6 of 24	4.d	Why are "receiving Water Limitations" being inserted here? None of the other TMDLs seem to follow that format.		
41	1 of 9	1.b	It is the permittees understanding that the lead impairment of Reach 2 of the San Gabriel River has been removed. It should be removed from the MS4 permit.		
42	1 of 9	1.c	Permittees under the new MS4 permit (those in LA County) need to be able to separate themselves from Orange County cities. Since the 0.941 kg/day is a total mass limit, it needs to apportioned between the two counties. Also, The MS4 permit needs to contain language allowing permittees to convert grouped-base limitations to individual permittee based limitations.		

43	1	G	Please remove, in its entirety, the Santa Ana River TMDLs		
44	general	general	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also include compliance at the outfall, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of core programs.		
45	4 of 8	C.5.b.1	For the Freshwater portion of the Dominguez Channel: There are no provisions for BMP implementation to comply with the interim goals. The wording appears to contradict Section E.2.d.i.4 which allows permittees submit a Watershed Management Plan or otherwise demonstrate that BMPs being implemented will have a reasonable expectation of achieving the interim goals.		
46	4 of 8	C.5.b.2	For Greater LA Harbor: Similar to the previous comment regarding this section. The Table establishing Interim Effluent Limitations, Daily Maximum (mg/kg sediment), does not provide for natural variations that will occur from time to time in samples collected from the field. Given the current wording for the proposed Receiving Waters Limitations, even one exceedance could potentially place permittees in violation regardless of the permittees level of effort. Reference should be made in this section to Section E.2.d.i.4 which will provide the opportunity for Permittee to develop BMP-based compliance efforts to meet interim goals.		
47	4 of 8	C.5.b.2	For the freshwater portion of the Dominguez Channel: the wording should be clarified. Section 5.a states that "Permittees subject to this TMDL are listed in Table C." Then the Table in Section C.5.b.2 Table "Interim Effluent Limitations--- Sediment", lists all permittees except the Fresh water portion of the Dominguez Channel. For clarification purposes, we request adding the phase to the first row: "Dominguez Channel Estuary (below Vermont)"		

Document Name: Watershed Management Program Working Proposal - April 23 2012

Agency/Reviewer: LA Stormwater Permit Group

Comment	Doc. Reference		Comments		Author Response
No.	Page	Section		Rvwr (optional)	
1	4	(4)	Pollutants in category 4 should not be included in this permit term, request elimination of any evaluation of category 4. Request elimination of category 3, as work should focus on the first two categories at this point		
2	2, 11, 13	various	The Table (TBD) on page 2 states implementation of the Watershed Program will begin upon submittal of final plan. Page 11, section 4 Watershed Management Program Implementation states each Permittee shall implement the Watershed Management Program upon approval by the Executive Officer. Page 13 section iii says the Permittee shal implemenet moduifications to the storm water management program upon acceptance by the Executive Officer. All three of these elements should be consistent and state upon approval by the Executive Officer. The item on page 13 should be changed to reflect the Watershed Management Program, or clarify that the Watershed Management Program is the storm water management program.		
3	2, 3	Table and C.2.a - d	Please allow 24 months for development of the Watershed Management Program to provide sufficient time for callibration and the political process to adopt these programs		
4	4	C.3.a.iii	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions		
5	9	(5)	Reasonable assurance analysis and the prioritization elements should also include factors for technical and economic feasibilty		
6	2	C.2	Please clarify that Permittees will only be responsible for continuing existing programs and TMDL implementation plans during the iterim 18 month period while developing the Watershed Management Program and securing approval of those programs		

7	9	(4)(c)	While it may be appropriate to have an overall design storm for the NPDES Permit and TMDL compliance, this element seems to address individual sites. Recommend developing more prominently in the areas of the Permit that deals with compliance that the overall Watershed Management Program should deal with the 85th percentile storm and that beyond that, Permittees are not held responsible for the water quality from the much larger storms. However, requiring individual projects to meet this standard is limiting as there may be smaller projects implemented that individually would not meet 85th percentile, but collectively would work together to meet that standard. Please clearly indicate cities are only responsible for the 85th percentile storm for compliance and that individual projects may treat more of less than than number.		

Document Name: **RWL Working Proposal - April 23 2012**

Agency/Reviewer: **LA Stormwater Permit Group**

Comment No.	Doc. Reference		Comments		Author Response
	Page	Section		Rvwr (optional)	
1	1 - 2	all	Currently the State Board is considering a range of alternatives to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but at the same time allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. It is imperative that the Regional Board works with the State Board on this very important issue		

LA PERMIT GROUP

For more information please contact:
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April 13, 2012

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SUBJECT: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) – Minimum Control Measures and Non-Stormwater Discharges

Dear Ms. Purdy and Mr. Ridgeway:

The Los Angeles Permit Group would like to take this opportunity to provide comments on the working proposals for Minimum Control Measures (MCMs) and prohibitions for non-stormwater discharges. These documents were posted on the Regional Board website on March 21 and March 28, 2012 respectively. The LA Permit Group appreciates the Regional Board staff's effort to develop the next NPDES stormwater permit and their commitment to meet with various stakeholders including our group. We look forward to continuing the dialogue with the Board staff on this very important permit. Our overarching comments on the MCMs and non-stormwater discharges are highlighted in this letter. Detailed comments regarding the Staff Working Proposal for MCMs are attached. Detailed comments related to Non-stormwater Discharges will be submitted next week.

Watershed-Based Program and Maximum Extent Practical Standard

In order to achieve further water quality improvements, the Permit needs to set clear goals, while allowing flexibility with the programs and BMPs implemented. The way to accomplish this is through integrated watershed planning and monitoring. This strategy has been presented by the LA Permit Group as it will allow permittees to look at the larger picture and develop programs and BMPs based on addressing multiple pollutants. In doing so, limited local resources can be concentrated on the highest priorities. The LA Permit Group has on numerous occasions expressed our support of a watershed based approach to stormwater management. It would appear in Provision VI.C.1.a that the Board proposal also supports this approach.

The permit should allow permittees to tailor actions as part of a Watershed Plan.. The permit should clearly indicate that permittees have the option of either adopting the MCMs as they are laid out within the permit or purse a Watershed Plan that provides permittees with the flexibility to customize the MCMs. The opportunity for a municipality to customize the MCMs to reflect the jurisdiction's water quality conditions is absolutely critical if municipalities are to

develop and implement stormwater programs that will result in achievement of water quality standards and environmental improvement. We, however, feel the MCMs are overly prescriptive and suggest that the permit ultimately establish a criterion that will be used to support any customization of MCMs. The criteria should be comprehensive but flexible. We suggest flexibility in the criteria because the management of pollutants in stormwater is a challenging task and the science and technology to help guide customizing MCMs are still developing. Furthermore, the municipal stormwater performance standard to reduce pollutants to the maximum extent practicable is not well defined and will depend on a number of factors[1]. This constraint, as well as USEPA position[2] that the iterative/adaptive process is the basis for good stormwater management, supports the need to provide flexibility in defining the criteria for customizing actions.

We anticipate having further comments related to the MCMs once further information has been released regarding the permit structure and how the various aspects of the permit will work together. For example, it is difficult to fully comment on the MCMs until we are able to see them in the context of the compliance structure and the Watershed Plan section of the Permit.

Timeline and Fiscal Resources

The Staff Working Proposal does not provide timelines for the start-up and implementation of the MCM requirements. It is fair to say that there will be a transition period between the time the Permit becomes effective and the time that the municipalities will have to modify their current stormwater management programs to be in compliance with the new Permit provisions. At the same time, consideration should be given to the time required to develop watershed based "customized" programs. The LA Permit Group requests that the Regional Board provide a draft timeline for implementation and phasing-in of the MCM requirements.

Regarding fiscal resources, the LA Permit Group would like to recognize the parameters in which municipalities operate. The Staff Working Proposal requires municipalities to exercise its authority to secure fiscal resources necessary to meet all of the requirements of the Permit (page 5). However, we have a limited amount of funds that are under local control. Any additional funds needed for stormwater programs would need to come from increased/new stormwater fees and grants. New fees for stormwater are regulated under the State's Prop 218 regulations, and require a public vote so this is an item that is not under direct control of the municipalities – the Regional Board must take this into consideration and this provision should be removed from the permit. Furthermore in addition to clean water, local resources are also directed to a number of health, safety and quality of life factors. Thus, all these factors need to be developed in balance with each other. This requires a strategic process and that will take time to get right. We urge you to develop the permit conditions based on a reasonable timeframe in balance with the existing economy and other health, safety, regulatory and quality of life factors that local agencies are responsible for.

Shifting of State Responsibility to the MS4 Permittees

The Staff Working Proposal shifts much of the State responsibilities to the Municipalities regarding the State's General Permits for Construction Activities (CGP), Industrial Activities (IGP) and NPDES permits issued for non-stormwater discharges. Such examples are noted in our attached detailed comments.

In addition, there are requirements outlined in the Staff Working Proposal that exceed those required in the CGP and IGP. For example, the CGP compared to Provision 9.f which requires a ESCP for construction sites of all sizes. A few examples of where the Staff Working Proposal either shifts the responsibility or actually exceeds the requirements of the CGP are listed below:

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

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

- Maintaining a database that overlaps with the State's own SMARTS database. Asking Permittees to collect the same data adds unnecessary time and expense with no benefit to water quality.
- Maintaining a database for all types of permits is excessive and includes building permits that have little or no relevance to water quality protection.
- Requiring the development of a Rain Event Action Plan for small sites under 1 acre or for sites that would be categorized as Risk Level 1 under the CGP.

Those elements that shift State responsibility should be eliminated and the MCMs should be coordinated with other state and federal requirements, with particular attention to CGP and IGP requirements.

MCMs Should Reflect Effective Current Efforts

The LA Permit Group understands that the new Permit must reflect current efforts of stormwater management and water quality issues. Where the current stormwater management effort is assessed to be inadequate, then additional efforts are warranted. However, when permittees' current efforts are assessed to be adequate for protecting water quality, then the MCMs should reflect permittees' current efforts. One significant area where the LA Permit Group believes that the current effort is protective of water quality is in the new development program. Both the City and County of Los Angeles have developed and adopted Low Impact Development Ordinances and significant work, technical analysis, and public input have gone into the development of these ordinances. Rather than developing more stringent standards, the Permit should use these pre-established Ordinances as a reference for the type of program and flexibility needed to accommodate the unique and vastly varying characteristics throughout the County. Instead of providing detailed information in the text of the Permit, the LID provisions should outline general requirements of the program, and the details contained in a technical guidance manual. This point was reiterated by several speakers at the April 5, 2012 workshop, including BIA and supported by several Regional Board Members.

"MCMs for New Development"

Notwithstanding our comments above, the LA Permit Group has a number of concerns with the New Development provision of the MCMs. While the LA Permit Group has concerns and requests clarification with the other MCMs, we find the New Development MCMs the most challenging and unsupportable. These provisions are difficult to follow and the BMP selection hierarchy is confusing and at times in conflict. The LA Permit Group believes this provision should be redrafted. We have significant concerns with the following parts of the New Development MCMs:

- Selection hierarchy
- Infeasibility criteria
- Treatment Control Performance benchmarks (water quality based versus technology based)
- BMP tracking
- Inspection program
- BMP specificity

"MCMs for Public Agency Activities"

The Staff Working Proposal identifies, in a number of provisions, requirements to address trash regardless of whether the area is subject to a trash TMDL. We take exception to this approach, as on the one hand the MCMs requires prioritization, cleaning and inspection of catch basins as well as street sweeping and some other management control measures to address trash at public events. And then, even if the municipality is controlling trash through these control measures, the municipality must still install trash excluders (see page 63 regarding "additional trash management practices"). This makes little sense and the LA Permit Group would submit that if the initial control measures are successful, then the "additional trash management practices" are unnecessary (as evident by the lack of a TMDL).

"MCMs for ID/IC"

The Staff Working Proposal identifies a significant non-stormwater outfall based monitoring program. The LA Permit Group submits that TMDLs monitoring programs have already identified, to a large extent, a comprehensive non-stormwater monitoring program. As such we suggest that the TMDL monitoring program be the basis for the "non-stormwater outfall based monitoring program" and both should be identified in an Integrated Watershed Monitoring Program.

The other critical issue in the ID/IC program is clarifying the responsibilities of the municipalities and the Regional Board. This is particularly important when dealing with ongoing illicit discharges (see page 71). When this type of discharge occurs, the ultimate responsibility in correcting the illicit discharge lies with the discharger. The municipalities and the Regional Board may need to work in tandem to address a recalcitrant discharger, but the fiscal responsibility should lie with the discharger and not the municipality or Regional Board.

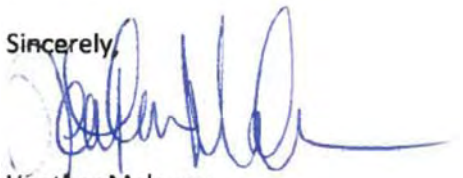
Non-Stormwater Prohibitions

The two overriding concerns associated with the proposed non-stormwater prohibition requirements is 1) the assumption that certain non-stormwater discharges should be conditioned to be allowed and 2) the need for further discussion and collaboration regarding potable water and fire operations and training activities discharges to MS4s. In the first case the LA Permit Group would submit that the monitoring data to support these conditions is lacking and should be the focus of the next Permit term. The LA Permit Group supports the need to place certain conditions on non-stormwater discharges when it has been shown that the discharge is an issue in the receiving water. Anything less than such a demonstration calls into question the water quality benefit for the additional cost to implement the conditions. Regarding our second observation, the LA Permit Group has worked closely with a group of community water systems and Fire Chiefs to discuss how potable water discharges should be addressed. While we have reached consensus on certain aspects, additional discussion and time is needed to work towards consensus.

In particular, the permit should differentiate between natural flows such as stream diversions, natural springs, uncontaminated groundwater and flows from riparian habitats and wetlands and urban discharges. Natural flows should not be held to a standard equal to urban discharges. The requirements to conduct appropriate monitoring and explore alternatives for the discharge are not commensurate with water quality concerns. Natural sources should not be conditioned in order to be allowed. The LA Permit Group recommends that the Regional Board continue the current permit format of categorizing natural sources separately from urban activity discharges.

Thank you for the opportunity to comment on the working proposals and we look forward to meeting with you to discuss our comments and to explore alternative approaches. Please feel free to contact me at (626) 932-5577 if you have any questions regarding our comments.

Sincerely,



Heather Maloney
Chair, LA Permit Group

Attachment A: Specific Comments on the Regional Board Staff Working Proposal for the Greater Los Angeles County MS4 Permit

cc: Sam Unger, LARWQCB
Deb Smith, LARWQCB

LOS ANGELES PERMIT GROUP COMMENTS
MINIMUM CONTROL MEASURES – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
General			
1	2	C.1.c	The Definition of: "Development", "New Development" and "Re-development" should be added. The definitions in the existing permit should be used: ***"Development"*** *means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.* ***"New Development"*** *means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.* ***"Redevelopment"*** *means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.* The last of the three "routine maintenance" activities listed above should exclude projects related to existing streets since typically you are not changing the "purpose" of the street to carry vehicles and should not be altered.
Legal Authority			
2	4	2.a.i	Staff proposal states: "Control the contribution of pollutants to its MS4 from stormwater discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites." It appears the intent of this language is to transfer the State's inspection and enforcement responsibilities to municipalities through the MS4 permit. When a separate general NPDES permit is issued by the Regional or State Board it should be the responsibility of that agency collecting such permit fees to control the contribution of pollutants, not MS4 permittees.

3	4	2.a.vii	Staff proposal states: "Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees." The intention of this statement is unclear and should be explained, and a definition of "shared MS4" should be provided. How would an inter-agency agreement work with an upstream and downstream agency? This is not practical - this agreement should have been done before the interconnection of MS4 systems occurred. An example of this agreement should be provided within the Permit. The permittee will not agree to the responsibility of an exceedance without first having evidence of the source and its known origin (in other words, an IC/ID is a private "culprit" and not the cause of the City).
4	4	2.a.xi	Staff proposal states: "Require that structural BMPs are properly operated and maintained." MS4 agencies can control discharges through an illicit discharge program, and conditioning new/redevelopment to ensure mitigation of pollutants. Unless the existing development private property owners/tenants are willing or in the process of retrofitting its property, the installation and O&M of BMPs is not practical and cannot be legally enforceable against an entity that does not own or control the property, such as a municipal entity.
5	5	2.a.xii	Staff proposal states: "Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4." It is difficult, if not impossible; to accurately quantify the exact effectiveness of a particular set of BMP's in reducing the discharge of pollutants. Some discharges may be reduced over time given reductions in industrial activity, population in a particular portion of the community feeding into the MS4, or for other reasons not directly related to implementation of structural BMPs. Given that the County of LA is generally urbanized and thus impervious, a lethargic economic climate (meaning development and redevelopment is not occurring in an expeditious manner), and that several pollutants do not have known BMPs effective at removing/reducing the content (i.e., metals, toxics, pesticides), the effectiveness of BMPs should not be required and instead should only be used for research, development, and progress of BMP testing.
Fiscal Resources			
6	5	3	The staff proposal includes a section on Fiscal Resources. Most MS4's do not have a storm water quality funding source, and even those that do have a funding source are not structured to meet the requirements of the proposed MS4 requirements (for instance, development funds may be collected to construct an extended detention basin, but not for street sweeping, catch basin cleaning, public right-of-way structural BMPs, etc).

7	5	3.a	Staff proposal states: "Each permittee shall exercise its full authority to secure fiscal resources necessary to meet all requirements of this Order" This sentence has no legally enforceable standard. What exactly does the exercise of "full authority" mean, when the exercise of a city's right to tax comes with consequences and no guarantee of success. Municipal entities must adjust for a variety of urgent needs, some federally mandated in a manner that cannot be ignored. So, if we seek the fiscal resources to fund the programs required in the permit and the citizens say "No", then a municipality will have a limited ability to comply with "all requirements of this Order".. Can the language be changed to state: "Each permittee shall make its best efforts given existing financial and budget constraints to secure fiscal resources necessary to meet all requirements of this Order"?
Public Information and Participation Program			
8	6	6.a.iii	Staff proposal states: "To measurably change the waste disposal and stormwater pollution generation behavior of target audiences…" Define the method to be used to measure behavior change. As written, this requirement is vague and open to interpretation.
9	7	6.d.i.2.b	Staff proposal states: "… including personal care products and pharmaceuticals)" The stormwater permit should pertain only to stormwater issues. Pharmaceuticals getting into waters of the US are typically a result of waste treatment processes. All references to pharmaceuticals should be removed from this MS4 permit.
10	8	6.d.i.3	The Regional Board assumes that all of the listed businesses will willingly allow the City to install displays containing the various BMP educational materials in their businesses. If the businesses do allow the installations then the City must monitor the availability of the handouts because the business will not monitor or keep the display full or notify the City when the materials are running out. If the business will not allow the City to display the educational material must we document that denial? Will that denial indicate that the City is not in compliance?
Industrial/Commercial Facilities Program			
11	10	7.b.i.4	Staff proposal states: "All other facilities tributary to waterbody segment addressed by a TMDL…" As written, this category is so vague that it could mean every single industrial or commercial facility. Please clearly define or revise this requirement. In this context, "commercial" refers to a currently unspecified category of facilities beyond those listed in VI.C.7.b.i.1 (page 9). Provide a precise definition for a commercial facility, or specify the extended category (or NAICSs/SICs) of facilities to be considered. Also, clarify how the Permittees will initially determine the pollutants generated for these facilities. A method that will promote consistency among Permittees is preferred, such as a table of potential pollutants based on business type or activities.

12	10	7.b.ii.6	Staff proposal states: "A narrative description that describes the economic activities performed and principal products used at each facility" Since "economic activities" is an invasive question to ask of a facility, we suggest the following: "A narrative description of activities performed and/or principal products of each facility."
13	11	7.d-f	These sections pertain to inspecting critical source facilities where it appears the intent is to transfer the State's Industrial General Permit inspection and enforcement responsibilities to municipalities through the MS4 permit. We request eliminating these sections OR revise to exclude all MS4 permittee responsibility for NPDES permitted industrial facilities.
14	17	7.e.i	Staff proposal states: "…in the event a Permittee determines that a BMP is infeasible, Permittee shall require implementation of similar BMPs…" Judging a BMP to be "infeasible or ineffective" is subjective. Please delete this requirement.
15	17	7.e.i	Staff report states: "Facilities must implement the source control BMPs identified in the California Stormwater BMP Handbook, Industrial and Commercial, unless the pollutant generating activity does not occur. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the stormwater discharges. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls." It is not clear when source control BMPs would need to be implemented. Further, if the City implements low-flow diversions and an enhanced street sweeping program, it would not make sense to still require BMP retrofits to those catchment areas.
Development Planning			
16	21	8.b.1	This permit update would be a good opportunity to examine the type of developments that are subject to the permit. There should be a link between the selected categories and the water quality objectives. Perhaps a reworking of this section could provide that clear nexus.
17	21	8.b.i.1.g	Roadway construction projects that are part of a large development (i.e. track-home development) can be subjected to the associated residential or commercial/industrial development, making this requirement difficult to implement.
18	21	8.b.i.1.g	The proposed limit is too low for street construction projects by using the typical 10,000 square foot number that is used in several development projects. A street project that proposes to build 10,000 sq. ft. is an extremely small street project, as the requirement calls out overall area. It might consist of a one block extension of a street 60 feet wide by 166 feet long. When cities propose street extensions it is usually in terms of half mile or mile-long segments which involve more than 150,000 square feet (sq. ft.). For public works projects, the area of 50,000 sq. ft. is a more correct and appropriate threshold. Please delete this requirement.
19	21	8.b.i.1.g	Public Works roadway maintenance projects including the ones that expand the roadway capacity should not be subject to these provisions because of the limited opportunities for BMP incorporation. Existing roads incorporate a large number of utilities within them that limits the opportunities for BMP incorporation.

20	21	8.b.i.1.g	We support the use of opportunity-based BMP guidance for roadway projects such as the referenced USEPA's "Green Infrastructure: Green Streets", however calling for this implementation to the maximum control possible is contradictory.
21	24	8.c.i.1	It appears based on the language that the project performance criteria of c. is intended to apply to all categories of new development and redevelopment projects as listed in b.i and b.ii. Please clarify whether this is meant to apply to single family hillside homes with no size limit? A new definition of single family hillside home has not been provided in this working draft, so it is unclear whether this is the case. If the intention was to only require the narrative measures for single-family hillside homes as listed in 8.b.i.(1)k)i-v, and not require to retain the design volume onsite, then that should be clarified by excluding them from the 8.c.i(1) statement.
22	24	8.c.i.2	The SWQDv definition should be modified to better reflect the purpose of the regulation as stated in 8.a.i(3) "… designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment water balance...". Modify as follows: "... the Stormwater Quality Design Volume (SWQDv) defined as the runoff from all impervious surfaces that are generated by a:..."
23	24	8.c.i.2.c	The "whichever is greater" requirement is unnecessary since both criteria are deemed to be equivalent. This requirement will only increase design time by having engineering staff perform multiple analyses.
24	24	8.c.i.5	Please define the term "wet-weather season".
25	24	8.c.i.5	The only reasonable and still beneficial rainwater harvesting approach would require the storage of the seasonal (winter-time) runoff for use when needed (spring and summer). This would increase the size of the rainwater harvesting BMPs. RWQCB should acknowledge that rainwater harvesting is both economically and technically infeasible for the vast majority of development projects in arid Los Angeles region climates.
26	24	8.c.i.6	The 72 hour drawdown requirement is counterproductive. Most irrigation practices do not irrigate landscaping within 72 hours after heavy/medium rainfall events because the ground could be saturated and the plants do not require water. Irrigating saturated ground could result in increase dry weather runoff because the water will not percolate into the saturated soil quick enough.
27	25-26	Table	The table provided lacks clarity and the use of M_v parameter is not clear and is not defined. However it appears to require projects that cannot retain runoff on-site to seek alternative locations to retrofit. We anticipate that this requirement will be unfeasible for a number of legal, logistical and technical reasons and as a result the "Least Preferred Option" will be exercised in most cases. The "Least Preferred Option" requires the over-sizing of the biofiltration systems by a factor of 1.5. We recommend that any design be consistent with established design standards (i.e. California Stormwater Quality Association) for consistency and ease in its implementation.
28	25-26	Table	The requirements that are provided in this table seem to be overly prescriptive. The requirements are not water-quality driven but rather groundwater-recharge driven. A more balanced approach will allow the use of multiple BMP options and not excluding effective treatment technologies.
29	28	8.c.iii.3.b	The proposed language uses terms that may be understood by hydrologists, but most city engineers and development engineers would not know what a HUC-10 or an HUC-12 Hydrologic Area is. Please define these terms if they are going to be used in this regulatory permit.

30	29	8.c.iii.3.c	The federal stormwater regulation place importance on water quality. Groundwater recharge is outside the purview of this permit. The requirement to prove equal benefit should be removed.
31	29	8.c.iii.3.g	This section introduces an arbitrary delay if a project opponent petitions the Executive Officer to review a projects off-site mitigation. The project proponent deserves to receive a response in a reasonable time when an appeal is filed with the Executive Officer. We respectfully request that lines of communications be opened between the Executive Officer and the project proponent within 15-days when a third party files an appeal of the local jurisdictions decision on a project.
32	30	8.c.iii.4	Requiring biofiltration systems to treat 1.5 times the SWQDv will not improve water quality during a 85th percentile storm event. The concentration leaving the system will not improve if the system is 50% larger. Biofilters are typically size by increasing the surface area as the flow increases. If the flow is lower than the design flow a small area of the system is utilized. The removal efficiency is the same for all flow rates below the design flow and therefore the concentration is the same for the design flow or below.
33	30	8.c.iii.5.b	Biofilters are not designed with detention volume. They are designed on a flow rate basis. The last portion of the paragraph regarding pore spaces and re-filter should be removed.
34	30	8.c.iv.1	New development/redevelopment project that are upstream of an offsite water quality mitigation project should be exempt from the requirements of this subsection. Requiring a project to mitigate their pollutant load twice is unnecessary. This subsection should only apply if the project would discharge to the receiving water without first draining to an offsite project.
35	31	8.c.iv - Table	The presence of benchmark tables, even for the projects that implement offsite mitigation is inappropriate. These standards for the great part are not attainable by existing technologies. Development projects instead should only be subject to design standards not performance standards. The idea of upgrading the treatment system to achieve compliance introduces unnecessary uncertainties to future development activities in our region.
36	33	8.c.v.1	Alternatives to the Ventura County Permit Hydromodification criteria should be considered such as those identified in the Los Angeles County Low Impact Development Standards Manual or maintain the “peak flow control” requirements as appear in the existing permit. Los Angeles County watersheds are significantly different than those of Ventura County. Los Angeles County has limited areas draining into natural drainage systems.
37	33	8.c.v.1.a	The use of Erosion Potential (E_p) as a sole method for determining hydromodification impacts is inappropriate because of its limited use and difficulty to use. The existing Los Angeles County requirement to conduct hydrology and hydraulic analysis for SUSMP, 2-, 5-, 10-, 25-, and 50-year storm events and fully mitigate drainage impacts from these flow regimes is better understood.
38	37	8.c.vi	The Regional Board proposes an Annual Report item for each project that is approved with off-site mitigation. The calculations for the off-site mitigation should be easy to document, but the project performance without alternative compliance is not so clear. Please provide the information necessary to complete the annual report.
39	38	8.d.i	The proposed language as written would not accept existing LID Ordinances to be compliant with the applicable provisions of this Order. Please provide language that allows flexibility for existing LID ordinances and also provide criteria determining equivalency.
40	39	8.d.iv	It should be clarified that previously approved projects will not be subject to these requirements.

41	40	8.d.iv.b	This requirement should be limited to the sites already visited as part of the "critical sources" program. Allow a self-inspection program where the property owners will be required to maintain their BMPs based on their type and maintenance needs. These requirements can be incorporated in the Covenant and Agreement (C & A). Property owners will be required to keep records of maintenance performed on these BMPs. Municipalities lack the resources to conduct the inspection. Municipalities can perform instead a review of the inspection records on a random and as-needed limited basis.
Development Construction			
42	41	9.d	Requiring this on all projects regardless of size is excessive. Small project will have minimal if any impact on water quality. A lower limit needs to be set for applicability such as 100 cubic yards of disturbed soil. It may be appropriate for projects to install a minimum set of BMPs without the need for a plan.
43	41	9.e.1.i	Maintaining the required database for all types of permits issued by the municipalities is excessive since not all permits require this type of information. In the City of Los Angeles for example about 35,000 building permits are issued annually.
44	42-43	9.f.ii	The number of elements for the ESCP should not be the same as those of the State SWPPP as required by the General Construction Permit. Existing Erosion Control Plans require the identification and placement of the BMPs in the engineering drawings and this has been identified as adequate.
45	43	9.f.ii.3.i	An example of how excessive it is to require these elements for the smaller sites is the requirement to prepare a Rain Event Action Plan (REAP). Under the Construction General Permit, a REAP is not required until the project reaches a Risk Level 2 status. It is not justifiable to say that a grading project, that does not disturb more than an acre and is not subject to a CGP, should be required to prepare a REAP.
46	43	9.f.ii.4	The requirement to discuss the rationale for the selection and design of the proposed BMPs (including soil loss calculations for the non-selected BMPs) is excessive and it dramatically increases the engineering costs of small construction projects. Please delete this requirement.
47	43	9.f.ii.5	The proposed language shifts much of the State responsibilities for sites greater than one acre to the Municipal Permittees without shifting the corresponding funding. Please consider setting-up a mechanism for the municipalities to operate the registration, fee collection, and inspection for sites that are under GCP coverage or revise the language so that Municipal Permittees are not made responsible parties for this activity.
48	43	9.f.ii.8	The proposed language asks cities to verify the approvals of the Army Corps of Engineers, Department of Fish and Game and the Regional Water Boards prior to the issuance of a grading or building permit. This requirement should not be implemented unless the Regional Board can provide a simple, easy to use system to accomplish the check. Furthermore, many projects reviewed every day do not require a 401, 404 or a 1600 certification to be allowed to grade on their site. The few cases where these certifications are required, they are taken care of in the EIR process rather than the Building or Grading permit process. This restriction should cite the Planning process rather than the building or grading process.
49	43-44	9.g.i	The Regional Board should not write this MS4 permit to overlap the CGP. A project that is required to have coverage under the CGP will deal with the Risk levels and apply the appropriate provisions of the CGP. Smaller sites that do not require coverage under the CGP should have lesser requirements than Risk Level 1 provisions.

50	44	9.g.iv	The Regional Board is referring to an outdated set of BMP tables by referring to the 2003 version of the CASQA Manuals. CASQA has updated the manuals in 2010 and these are the manuals that should be referenced.
51	44-47	Tables	It appears that the Regional Board is taking the BMP tables from the CGP, without the language contained in the CGP that states that to avoid duplication each subsequent table needs to include or be added to the BMPs shown in the earlier list. Please include this language so that unfamiliar engineering, plan-checking, or inspection staff does not overlook the intent of the CGP.
52	48	Table	The proposed language would require municipalities to inspect GCP sites at least monthly. This constitutes a large increase in the inspection responsibilities for the municipalities for State responsibilities. Please delete or revise this requirement..
53	48	9.h.ii.2	The requirement to perform five inspections during the construction phase of a project, no matter how small, is excessive and serves no benefit. The only reasonable inspection would be during the grading phase and upon project completion as part of existing inspections.
54	50	9.h.ii.5.b	The language is all inclusive for the inspection portion of the permit. By asking the field inspector to "determine whether all BMPs have been selected, installed, implemented and maintained according to the approved plans." the Board is placing responsibility on the inspector which rightly should be the responsibility of the plan reviewer. If an inspector is having a dispute with the Contractor or builder of a project, the inspector can improperly raise the issue of BMP selection and cause great expense to the project. The Plan Reviewer should determine what BMPs are appropriate for the site and verify that they are properly designed. The inspector should verify that BMPs are install properly~~,~~ and are being implemented and maintained as required by the field conditions; however, to allow the inspector to evaluate selection is overstepping his training and authority.
55	51	9.j	A more effective approach would be through a State mandate for a Statewide training program perhaps through the use of the contractor's license board. Because of their nomadic nature of construction activity, contractors move from City to City at will. For a City to be responsible for training the contractors that work within their city is not possible. This should either be a State responsibility, much like the QSD/QSP programs currently run by the State.
56	54	10.d	If there is a specific pollutant to address, retrofitting or any other BMP would best be accomplished through a TMDL, which is for the Permittees to determine rather than a prescribed blanket approach. As written, this is too broad of a requirement with unknown costs that is attempting to solve a problem before there is a problem. Please delete this VI.C.10.d.

57	54	10.d	Staff proposal states: "Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part. The goals of the existing development retrofitting inventory are to address the impacts of existing development through retrofit projects that reduce the discharges of stormwater pollutants into the MS4 and prevent discharges from the MS4 from causing or contributing to a violation of water quality standards." This process would require land acquisition, a feasibility analysis, no impacts to existing infrastructure, proper soils, and support of various interested stakeholders. Additionally, if a property or area is being developed/redeveloped, retrofitting the site for water quality purposes makes sense, but not for an area where no development/redevelopment is planned. Finally, the LID provisions have already included provisions for off-site mitigation, in which we recommend that regional water quality projects be considered in lieu of local-scale water quality projects that will prove difficult to upkeep, maintain, and replace, let alone have existing sites evaluated as feasible. For these reasons, this requirement should be removed.
58	56	10.d.v	Any retrofit activities should be the result of either an illicit discharge investigation or TMDL monitoring follow-up and will need to be addressed on a site-by-site basis. A blanket effort as proposed in a highly urbanized area is simply not feasible at this time.
59	56	10.e.ii	Staff proposal states: "Each Permittee shall implement the following measures for flood management projects" Flood management projects need to be clearly defined.
60	60	10.g.ii.7	Staff proposal states: "Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters…" The method which a pesticide that causes "impairment" to waterbodies needs to be defined.
61	62	10.h.iv.1.c	Staff proposal states: "Provide clean out of catch basins… 24 hours after event" Many public events happen on the weekends (i.e. Saturday). To avoid excessive overtime costs, please change the requirement to "next business day after the event" or "next business day."
62	63	10.h.vii.1	This requirement appears to be an “end-run” around the lack of catch basin structural BMPs in areas not covered by Trash TMDLs. The requirement has the potential to be extraordinarily economically burdensome. If an area is NOT subjected to a Trash TMDL, then the need for any mitigation devices is baseless. The MS4 permit requirements should not circumvent nor minimize the CWA 303(d) process.
63	64	10.h.ix	Staff proposal requires: "Infiltration from Sanitary Sewer to MS4 / Preventive Maintenance…." The State Water Board has implemented a separate permit for sewer maintenance activities. Additional sewer maintenance requirements are redundant and unnecessary. Please delete this requirement.

Illicit Connection and Illicit Discharge Elimination Program			
64	-	11	In general the LA Permit Group would like the flexibility to determine where (i.e. outfall vs. receiving water) monitoring is conducted and how the program is developed. This flexibility is necessary due to the variability in the physical makeup from one watershed to the next, and perspectives/philosophy of one permittee to the next. The Group proposes to do "non-stormwater outfall-based monitoring program" as part of an Integrated Watershed Monitoring Program. There is ample dry weather monitoring in the TMDLs to address a "non-stormwater outfall-based monitoring program". Please revise each mention of *"Each Permittee"* to "Permittee/Permittees" to allow the flexibility of doing a Watershed or by individual city program, and sufficient program flexibility for receiving waterbody monitoring in-lieu of outfall monitoring.
65	-	11	A definition of "outfall" is required for clarity. An "outfall" for purposes of "non-stormwater outfall-based monitoring program" should be defined as "major outfall" pursuant to Clean Water Act 40CFR 122.26. Please revise each mention of "*outfall"* to read "major outfall" when discussing "non-stormwater outfall-based monitoring program".
66	68	11.a	Some small cities do not have digital maps. In the "General" category of Section 11, please provide a 1 year time schedule for cities to create digital maps OR provide the municipality the ability to develop comprehensive maps of the storm sewer system in any format.
67	68	11.b.i.1	Omit the comment, "*Each mapped MS4 outfall shall be located using geographical positioning system (GPS) and photographs of the outfall shall be taken to provide baseline information to track operation and maintenance needs over time*." This requirement is cost prohibitive and of little value because many City outfalls are underground and could not be accurately located or photographed. Photographs of outfalls in channels have little value since data required is already included on "As-Built" drawings. Geographic coordinates can easily be obtained using Google Earth or existing GIS coordinate systems. "The contributing drainage area for each outfall should be clearly discernable…" The scope of this requirement would involve thousands of records of drainage studies. The Regional Board should be aware that this requirement would be very labor intensive, time consuming, and very costly.
68	69	11.b.i.3	Storm drain maps should show watershed boundaries which by definition provide the location and name of the receiving water body. Please revise (3) to read "The name of all receiving water bodies from those MS4 major outfalls identified in (1).
69	69	11.c.i	The LA Permit Group proposes "non-stormwater outfall-based monitoring program" to be flow based monitoring. Please revise item (4) of 11., c. i. to read "(4) monitoring flow of unidentified or authorized non-stormwater discharges, and…"
70	69	11.c.i.4	"Monitoring of unknown or authorized discharges" "Authorized" discharges are exempted or conditionally exempted for various reasons. Monitoring authorized discharges is monitoring for the sake of monitoring and offers no clear goal or water quality benefit. Please delete this requirement. If the source of a discharge is unknown, then monitoring may be used as an optional tool to identify the culprit.
71	70	11.d.i	Please revise the proposed language to "Permitte/Permittes shall develop written procedures for conducting investigations to identify the source of **suspected** illicit discharges, including procedures to eliminate the discharge once source is located." It is not know if a discharge is illicit until the investigation is completed.

72	70	11.d.ii	Please revise the proposed language to "At a minimum, each Permittee/Permittees shall **initiate** an investigation(s) to identify and locate the source within 48 hours of becoming aware of the **suspected** illicit discharge." Due to the intermittent nature of illicit discharges, it is may not be possible to conduct the investigation within 48 hours.
73	70	11.d.iii.1	"Illicit discharges suspected of sanitary sewage… shall be investigated first." ICID inspectors should be allowed to make the determination of which event should be investigated first. For example, a toxic waste spill or a truck full of gasoline spill should take precedence over a sewage spill. This requirement should be amended to the "most toxic or severe threat to the watershed" shall be investigated first.
74	70	11.d.iii.4	Please revise the proposed language to "If the source of the discharge is found to be authorized under a NPDES permit…." If the discharge is permitted, then it is not "illicit".
75	70	11.d.iv.1	Please revise the first sentence of the proposed language to "If the source of the illicit discharge has been determined to originate within **a** Permittee's jurisdiction, the Permittee shall immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective actions to eliminate the **illicit** discharge within 48 hours of notification." "Non-stormwater" discharges do not equate to "illicit" discharges.
76	70	11.d.iv.2	Please revise the first sentence of the proposed language to "If the source of the **suspected** illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall…" Unknown discharges are suspected of being illicit discharges, but may in fact prove to be authorized discharges.
77	71	11.d.v	Please revise the proposed language *"the Permittee shall work with the Regional Water Board to provide diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee shall notify the Regional Water Board in writing within 30 days of such determination and shall provide a written plan for review and comment that describes the efforts that have been undertaken to eliminate the illicit discharge, a description of the actions to be undertaken, anticipated costs, and a schedule for completion.*" To "the Permittee shall work with and provide support to the Regional Water Board to continue Progressive Enforcement Policy of the Regional Board." In the case that an Illicit Discharge is ongoing, then the discharger can be identified and the responsibility to clean up and eliminate the discharge lies with the discharger. Any illicit discharge for which the Permittee has exhausted their Progressive Enforcement Policy should be deferred to the Regional Water Quality Control Board for additional Progressive Enforcement or permitting.
78	71	11.e.i	Please revise the first sentence to "Permittee/Permitees, upon discovery or upon receiving a report of a suspected illicit connection, shall **initiate** an investigation within 21 days…" The process to determine the source of an illicit connection or responsible party may take a considerable time should the suspected source be an unoccupied site.
79	71	11.e.ii	Please revise the "days of completion" from 90 to 180 days. Illicit connections need to be disconnected from the storm drain system in the street Right of Way, which will require plans and permitting. Permitting with in State Right of Way can take on average 60 to 120 days.

80	71	11.f.i	Revise the proposed first sentence to "Permittee/Permittees shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into the MS4s through a central contact point…" It is not possible to distinguish authorized discharges from illicit discharges at the outfalls.
81	71& 72	11.f.ii.1&2	Revise "PIPP" to "Hotline". The subject of this item is "reporting hotline requirements".
82	72	11.f.iii	Omit this section. "No Dumping" signs have already been posted at open channels.
83	72	11.f.iv	Omit the second sentence, "The procedures shall be evaluated annually to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee." This is an unnecessary and burdensome requirement. Procedures should be updated and documented as needed.
84	73	11.h.i	Please revise this section to "Permittee/Permittees must continue to implement a training program regarding or require contractors to implement training for the identification of IC/IDs for all municipal field staff who as part of their normal job responsibilities (e.g. street sweeping, storm drain maintenance, collection system maintenance, road maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to the storm drain system. Training program documents must be available for review by the permitting authority." Cities can require contractors to train their staff, but should not be directing contractor staff. The requirement to put notification procedures in fleet vehicles is unnecessary and is covered by the required training.
85	74	"Attachment	On page 74, reference is made to Bioretention/Biofiltration Design Criteria and the Ventura County Technical Guidance Manual. This criterion is likely not fit for LA County given that soils, impervious surface amounts, engineered channels, and agricultural practices are completely different in one county versus the other.

LOS ANGELES PERMIT GROUP COMMENTS
NON-STORM WATER DISCHARGE PROHIBITION – 3/28/2012 STAFF WORKING PROPOSAL
LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

No.	Page	Citation	Comment
1	1	III.A.1.a and III.A.2	RB staff proposed language requires the permittees to "effectively prohibit non-stormwater discharges ***into*** the MS4 and ***from*** the MS4 to receiving waters" except where authorized by a separate NPDES permit or conditionally authorized in sections III.A.3-6. This may overstep the required legal authority provisions in the federal regulations since 40CFR122.26 (d)(1)(ii) requires legal authority to control discharges ***to*** the MS4 but not ***from*** the MS4. Additionally, with respect to the definition of an illicit discharge at 40CFR122.26(b)(2), an illicit discharge is defined as "a discharge ***to*** the MS4 that is not composed entirely of stormwater". In issuing its final rulemaking for stormwater discharges on Friday, November 16, 1990[1], USEPA states that: *Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for* ***discharges from*** *municipal separate storm sewer systems must require controls to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-stormwater* ***discharges into*** *the storm sewers.* This is further illuminated by the section on Effective Prohibition on Non- Stormwater Discharges[2]: "*Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water*

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

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			*discharges **into the storm sewers**. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an 'effective prohibition' would require separate NPDES permits for non-storm water discharges to municipal storm sewers"* The rulemaking goes on to say that the permit application: *"requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems."* Nowhere in the rulemaking is the subject of prohibiting discharges *from* the MS4 discussed. Furthermore, USEPA provides model ordinance language on the subject of discharge prohibitions: http://www.epa.gov/owow/NPS/ordinance/mol5.htm. Section VII Discharge Prohibitions of this model ordinance provides discharge prohibition language as follows: *No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.* Thus we recommend that staff eliminate the "from" language at both Part III.A.1.a. and Part III.A.2.
2	3	III.A.3.b	This provisions outlined in this section are not clear. The provisions may be interpreted as the discharge being "exempt" as long as Table "X" does not contain an issue that is highlighted. Requiring the Permittees to look to Part V or Part VI.D or contact the Executive Officer to verify that there is no new information that will change the original permit determination is confusing.

LOS ANGELES PERMIT GROUP COMMENTS
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			We'd suggest that Table "X" be revised to include specific sections in Part V or VI.D that may modify the exempt determination. We'd respectfully request that, based on the Executive Officer's determination of a problem, a reopener clause is added so the Permit may be amended to account for changes exempt/conditionally exempt status.
3	3	III.A.3.b.i and III.A.3.b.ii	MS4 Permittees do not have the legal authority to divert and/or treat water from natural springs or riparian wetlands (including those which are spring fed) before they enter the MS4. We believe such flows should be unconditionally exempt from the discharge prohibitions.
4	3	III.A.3.b.iii	MS4 Permittees do not have the legal authority to override State or Regional Board authorized discharges from stream diversions. Once the State or Regional Board authorizes a discharge, the State or Regional Board becomes responsible for any pollutants in that discharge. For MS4 Permittees, this discharge should be unconditionally exempt.
5	4	III.A.3.b.x	The combination of gravity flow and a pumped flow is not appropriate. Gravity flow is not dewatering while pumped flow is dewatering. Please separate the two types of discharge. The installation of drain piping around a below grade foundation wall is intended to provide safety so that water pressure does not build up against a below grade wall. If the built-up water, which is generally not ground water but rather infiltrating rain water, then it can be drained by gravity which is not dewatering and therefore should not require an NPDES permit.
6	4	III.A.3.b.xv	The conditional exemption of street/sidewalk water is inconsistent with the requirement in the industrial/commercial MCM section that street washing must be diverted to the sanitary sewer. Sidewalk water should be conditionally exempt, but so also should patios and pool deck washing. If street washing has to be diverted to the sanitary sewer for industrial/commercial facilities, then it should for all facilities and so should parking lot wash water as they are similar in their pollutant loads.
7	4	III.A.3.b.xvi	Emergency fire fighting flows should be unconditionally exempt since they are necessary to protect life and property, regardless of whether or not they cause or contribute to an exceedance of RWL and/or WQBEL. To be consistent with the Ventura county permit, and because of the close link between emergency and non-emergency fire-fighting flows, we request all fire-fighting flows be unconditionally exempt or at minimum consider revising some of the proposed conditions of Table X to be more practicable and flexible.
8	4	III.A.3.b.xvi	Footnote No.10 which expressly prohibits building fire suppression system maintenance (e.g. fire line flushing) discharges to the MS4. With no viable alternative than discharging to the MS4, this prohibition directly conflict with California Health and Safety Code and the State Fire Marshall on the necessity to flush the system. Please delete this explicit prohibition.
9	6	III.A.5.c.i	The requirement to "eliminate irrigation overspray" is impossible to attain. An ordinance that

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			requires Permittees to levy monetary fines against residents is overreach. Please delete this requirement.
10	6	III.A.6	The provision to require dischargers to notify the Permittee of the discharge, obtain local permits and implement BMPs may not be feasible for many dischargers such as car washing and sidewalk washing. Alternatively municipalities can be required to implement ordinances that require anyone within their jurisdiction to comply with a series of conditions when performing those tasks.
11	6	III.A.7	The requirement to determine whether any of the conditionally exempted non-stormwater discharges is a source of pollutants is a requirement to monitor every non-stormwater discharge. This requirement is overly burdensome on Permittee staff, very costly, and a responsibility that will come into question. Please delete this requirement.
12	7	III.A.8	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a potable water supply caused an exceedance is a requirement to monitor every potable water supply discharge. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. Like emergency fire fighting discharges, potable water discharges should be exempt.
13	4	III.A.8	We support an exemption for a Permittee from a violation of RWL and or WQBELs caused by a non-stormwater discharge from a potable water supply or distribution system not regulated by an NPDES permit but required by state or federal statute. This should clearly apply to all NPDES permits issued to others within, or flow through, the MS4 Permittees jurisdiction. We would request that emergency releases caused by potable water line breaks, which are unexpected, and have to be dealt with as an emergency. MS4 permittees should be exempt from RWL or WQBEL violations associated with any permitted NPDES discharges that are effectively authorized by LARWQCB under the Clean Water Act.
14	8	III.A.9	The requirement of the Permittee to demonstrate that a specific non-stormwater discharge from a fire fighting activity caused an exceedance is a requirement to monitor every fire fighting activity, including location, date, time, duration, discharge pathway, and flow volume. This requirement places all the responsibility on the MS4 Permittees to monitor and test the samples, which is both labor intensive with limited personnel and extraordinarily costly. The burden of proof is placed on the Permittee for any exceedance until proven innocent by way of the monitoring results. It should be acknowledged by the Regional Board that fire fighting activity causes pollutants to be discharged. Discharges from all fire fighting activities should be unconditionally exempt, as protection of life and property is paramount.

LOS ANGELES PERMIT GROUP COMMENTS
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15	Table X	General	Enforcing NPDES permits issued for the various NSWDs referenced in this table should be the responsibility of the State/Regional Board, not the MS4 permittee. Therefore, it is inappropriate to include a condition that places a responsibility on the MS4 permittee to ensure requirements of NPDES permits are being implemented or effective in order for the pertaining NSWD category to be exempt. Proper enforcement of the various NPDES permits mentioned in this table should ensure impacts from these discharges are negligible.
16	Table X	Rising Groundwater	The condition that an NPDES permit is required when rising groundwater occurs where a sump pump is necessary in basement of residential buildings may become a significant burden to the LARWQCB—the number of such occurrences in the LA Basin will be very large.
17	Table X	Landscape Irrigation	Conditions should distinguish new landscape installation from retrofits. These conditions are much easier to require on new landscapes than on existing landscapes.
18	Table X	Swimming Pool/spa dischargers	By imposing additional criteria for the proper discharge of swimming pool water, it greatly increases the complexity for the thousands of homeowners in Los Angeles county to comply with these conditions and may result in fewer amounts of these flows from being dechlorinated. Consider simplifying the proposed conditions.

Exhibit D:

LA Permit Group Request for Extended Comment Period

LA PERMIT GROUP

July 2, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

This letter is to request the Regional Board to provide sufficient time for review the draft NPDES Permit for MS4 Discharges needed to make this process **open and transparent**.

The LA Permit Group is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for new water quality monitoring, however our permittees have been given only 45 days to provide written comments.

While we understand a new MS4 Permit is long overdue in LA County, we do not understand why the Regional Board would want to rush this landmark regulation through the approval process. It is in everyone's best interest to keep the permitting process as open and transparent as possible. Through this entire process, the LA Permit Group has committed to a process that would cooperatively develop the next MS4 Permit. We have made every effort to stay engaged in the process and have proactively sought involvement in all aspects of the Permit development. The LA Permit Group is appreciative of the efforts the Board and Staff has taken to review certain aspects of the Permit with permittees in workshops; however, upon release of the Tentative, many of the Permit provisions contained substantial changes from previous versions, or contained brand new sections that we had not yet seen throughout this process. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is imperative in order for permittees to fully understand the permit provisions and to prepare comments.

We believe the Regional Board wants a review process that is open and transparent; however, providing permittees only 45 days to comment makes it impossible for this process to be open and transparent. In order to develop and provide relevant and meaningful comments, each permittees must first:

- Read a 500 page permit,
- Study the 500 page permit to understand how the provisions work together,
- Compare it to the last permit,
- Evaluate the resource needs to comply with the permit,
- Determine the fiscal and organizational impacts on city services; this requires coordination with several city departments,
- Prepare legal review and comments,

- Present information to and gather feedback from municipal governing body (the process of scheduling an item for a City Council Agenda requires at least 30-60 days in most cities). This does not allow staff time to conduct the following items listed above prior to presenting to their governing bodies, and then
- prepare written comments

Additionally, emphasis on coordination of comments has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. The 45-day comment period does not allow time for permittees to fully discuss the permit amongst each other in order to adequately coordinate comments and responses. This process is not only desired by permittees, but also necessary as many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments.

Furthermore, for this process to be clearly open and transparent, permittee (City) staff should be given sufficient time to vet this permit within our agency staff and with our elected officials and then be given time to discuss and negotiate issues with Regional Board staff prior to the Tentative Draft comments due date.

The LA Permit Group respectfully requests for the comment period to be extended by **180 working days** for permittees to first try to work with Regional Board staff to draft a permit that has a reasonable chance for compliance and then prepare written comments on un-resolved issues. Additionally, we request that a Revised Tentative Permit be released with a 45-day comment period so that permittees have the opportunity to see any changes made to the Permit and have the chance to provide comments prior to the Adoption Hearing.

If you have any questions or request additional information, I may be reached at (626) 932-5577 or hmaloney@ci.monrovia.ca.us.

Sincerely,

Heather M. Maloney, Chair
LA Permit Group

cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfield, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer
Senator Ed Hernandez
Senator Bob Huff

Exhibit E:

RWL submitted by CASQA re Caltrans permit

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

June 26, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit Second Revised Draft Tentative Order

Dear Ms. Townsend:

The California Stormwater Quality Association appreciates this opportunity to comment on the subject Caltrans Municipal Separate Storm Sewer System (MS4) Permit Second Draft Tentative Order (draft Tentative Order). CASQA typically comments on individual MS4 permits only when there is an issue of potential statewide significance. Accordingly, we are compelled to comment on the Receiving Water Limitations provisions incorporated into the draft Tentative Order.

The Draft Tentative Order in Provisions A and C will expose the Department to unwarranted and immediate liability.

CASQA believes the current revision of the receiving water limitations section is contrary to established Board policy and appears to create an inability for Caltrans to comply. Multiple constituents in stormwater runoff on occasion may be higher than receiving water quality standards before it is discharged into the receiving waters, and may create the potential for the runoff to cause or contribute to exceedances in the receiving water itself. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation D.4 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The "iterative process language" now at issue in the draft Tentative Order, however, combined with General Discharge Prohibition A.4, renders the iterative process obsolete as a compliance strategy. Moreover, in the wake of the July 2011 Ninth Circuit Court of Appeal's decision, if this language is not revised, the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

As you know, on July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA). The court's opinion addressed two key issues for California's MS4s, one of which is directly applicable here, that being whether a permittee who is in compliance with the iterative process is nevertheless still in violation of a MS4 permit that contains language like that proposed for Caltrans.

Like the Caltrans draft Tentative Order, the County of Los Angeles MS4 permit includes Receiving Water Limitations language that is consistent with the language developed by the State Water Board in its Order WQ 99-05. In previous State Water Board orders, the Board indicated that the language specified in Order WQ 99-05 did not require strict compliance with water quality standards. The language in question is often referred to as the "iterative process."

However, contrary to the State Water Board's stated intent and the understanding of CASQA, the Ninth Circuit Court of Appeals found that, because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit, a party whose discharge "causes or contributes" to an exceedance of a water quality standard is in violation of the permit, even though that party is implementing the iterative process in good faith.

As a result of the court's decision, if the draft language is not changed, all discharges to receiving waters must meet water quality standards to avoid being in violation of permit terms. Although an important goal, no one reasonably expects Caltrans or any other municipal permittee to be able to meet this goal now. Indeed, the impossibility of meeting this goal is reflected by the hundreds of TMDLs across the state that specifically recognize that water quality standards cannot currently be met, often for reasons beyond Caltrans or other permittees' control, and that instead an adaptive program over a span of several years or longer is necessary.

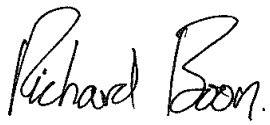
Thus, unless this language is changed, Caltrans may be vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. Indeed, the liability resulting from a failure to address these provisions may be a risk to Caltrans regardless of the current or future enforcement policy of the State or Regional Water Boards. For example, the City of Stockton was engaged in the iterative process per the terms of its Permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language. There is no regulatory benefit to imposing permit provisions that result in the potential of immediate non-compliance for the Permittee.

To avoid undercutting the regulatory benefits of the State Water Board's program for Caltrans (and other MS4s), the Receiving Water Limitations language must be revised. In an attempt to avoid this undercutting we have attached proposed language for the Receiving Water Limitation provision. CASQA believes that our suggested Receiving Water Limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides effective compliance with the discharge prohibition (General Discharge Prohibition A.4), and the "shall not cause or contribute" receiving water limitations (Receiving Water Limitations D.2 and D.3). Furthermore the proposed language allows the MS4s to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement, such as those reflected by the TMDLs. We therefore request further consideration of this or other alternative language so as to avoid a situation where, even if Caltrans is in complete compliance with the iterative process provisions, it could be subject to significant liability and lawsuits.

We thank you again for the opportunity to provide our comments and we ask that the Board carefully consider them and our suggested Receiving Water Limitations language for the

Caltrans permit. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Richard Boon, Chair

cc: CASQA Board of Directors and Executive Program Committee

Attachment – CASQA Proposed Language for Receiving Water Limitation Provision

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

February 21, 2012

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

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

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

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

Yours Truly,

Richard Boon

Richard Boon, Chair
California Stormwater Quality Association

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

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.

2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.

3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:

    a. Submit a report to the State or Regional Water Board (as applicable) that:

        i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.

        ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4to help inform Regional or State Water Board efforts to address such sources).

        iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.

        iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.

        v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.

        vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.

c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.

d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.

4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.

5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.