



City of Downey

FUTURE UNLIMITED

July 28, 2009

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

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

Dear Mr. Ridgeway:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- "Stormwater permits must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs in lieu of numeric water quality based effluent limits." (State Board Order WQ 98-01, pg. 12)
- "Federal regulations do not require numeric effluent limitations for discharges of stormwater." (State Board Order WQ 2006-0012, pg 17)
- "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and, in particular, urban dischargers." (The Blue Ribbon Panel Recommendations to the State Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater, June 19, 2006, pg. 8*)

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Dn. Mario A. Guerra". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Dn. Mario A. Guerra
Mayor

MAG:sc