
Los Angeles Regional Water Quality Control Board

August 29, 2023

Mark Lombos
Assistant Deputy Director, Stormwater Quality Division
County of Los Angeles Department of Public Works
P.O. Box 1460
Alhambra, CA 91803-1460

REQUEST FOR CLARIFICATION ON DISCHARGES OF NON-STORMWATER FROM BEST MANAGEMENT PRACTICES (BMPs) UNDER THE REGIONAL MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004004; ORDER NO. R4-2021-0105), COUNTY FILE SWQ-3

Dear Mr. Lombos:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) is in receipt of your letter dated December 27, 2022, requesting clarification and guidance on discharges from treat and release type projects, such as the City of Los Angeles's Aliso Creek – Limekiln Creek Project.

The Aliso Creek – Limekiln Creek Project would divert dry-weather runoff from Aliso Creek, Limekiln Creek, and a storm drain into pre-treatment devices to remove debris and sediment, and then a series of bioretention basins, consisting of engineered soil media and vegetation. The treated water would then be discharged back to Aliso Creek, which is a tributary of Reach 6 of the Los Angeles River.

CWA section 402(p) prohibits the discharge of pollutants from specified MS4s to waters of the United States except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit and identifies the substantive standards for MS4 permits.¹ Part III.A.1 of Order No. R4-2021-0105 (MS4 Permit) states, "Each Permittee for the portion of the MS4 for which it is an owner or operator shall prohibit non-stormwater discharges through the MS4 to receiving waters." Non-stormwater discharges specifically exclude discharges of natural flows that are "Diverted stream flows, authorized by the State Water Board or Los Angeles Water Board" (MS4 Permit, Part A.2.e.3.iii). Attachment A of the MS4 Permit defines a "discharge" as, "When used without qualification the release of a pollutant or pollutants from the MS4." Attachment A also defines "discharge of a pollutant" as, "Any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'["]

The Aliso Creek – Limekiln Creek Project is a diversion of a natural flow, and the type of pre-treatment and treatment devices to be implemented do not add pollutants to the diverted flow that would constitute a discharge requiring an NPDES permit. Therefore, the Los Angeles Water Board has determined that this project, and other projects that involve similar types of treatment and release back to the receiving water, do not need to obtain a separate approval from the Los

¹ CWA § 402(p)

Angeles Water Board in order for the County to comply with Part III.A of the MS4 Permit. This determination is made with the following caveats:

- No chlorine or other chemical sanitizer, flocculants, or other additives are allowed as part of the treatment process.
- The Los Angeles Water Board may issue an investigative order to the project proponent in the future to obtain water quality information for the project, although this is not required to be issued before the County enters into a Use and Maintenance Agreement with the project proponent.
- The project may require a Clean Water Act section 401 Water Quality Certification. The impact of reduced flows on beneficial uses of the receiving water may be considered when evaluating the project purpose as part of the certification process.
- Projects that involve diversion to the sanitary sewer or that are diverted to be put to another use, e.g., for underground water storage or for use as a seawater intrusion barrier, may require a Water Right pursuant to Water Code section 5101.

Please note that diversion projects intended to address upstream discharges should be undertaken as a last resort to comply with receiving water limitations. Permittees should address stormwater and non-stormwater flows prior to their discharge into receiving waters. In addition, for diversions from the receiving water, permittees are still responsible for compliance with receiving water limitations above the point of diversion.

We appreciate the County of Los Angeles's cooperation in implementing the MS4 Permit. If you have any questions, please call LB Nye, Manager of the Regional Programs Section, at lb.nye@waterboards.ca.gov or (213) 576-6622.

Sincerely,

Original signed by Jenny Newman on August 29, 2023

for Susana Arredondo
Executive Officer

cc: Bruce Hamamoto, County of Los Angeles Department of Public Works
Michael Scaduto, LA Sanitation and Environment
Alfredo Magallanes, LA Sanitation and Environment