

1 RUTAN & TUCKER, LLP  
Richard Montevideo (State Bar No. 116051)  
2 Joseph Larsen (State Bar No. 244506)  
611 Anton Boulevard, Fourteenth Floor  
3 Costa Mesa, California 92626-1998  
Telephone: 714-641-5100  
4 Facsimile: 714-546-9035

5 Attorneys for Petitioners  
6 Cities of Duarte and Huntington Park  
7

8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
9  
10

11 In the Matter of:

12 The California Regional Water Quality  
13 Control Board, Los Angeles Region's  
Adoption of Waste Discharge Requirements  
14 for Municipal Separate Storm Sewer System  
(MS4) Discharges Within The Coastal  
15 Watersheds of Los Angeles County, Except  
Those Discharges Originating from the City  
16 of Long Beach MS4, Order No. R4-2012-  
0175, NPDES No. CAS004001  
17  
18  
19

PETITION FOR REVIEW OF THE  
CITIES OF DUARTE AND  
HUNTINGTON PARK

[Water Code § 13320 and Title 23,  
CCR § 2050, et seq.]

20

21

22

23

24

25

26

27

28

1 Petitioners, the Cities of Duarte and Huntington Park (“Cities”) respectfully petition  
2 the State Water Resources Control Board (“State Board”) to review the decision of the  
3 California Regional Quality Control Board, Los Angeles Region (“Regional Board”) to  
4 adopt the National Pollutant Discharge Elimination System (“NPDES”) Permit for  
5 Municipal Separate Storm Sewer System (“MS4”) Discharges Within the Coastal  
6 Watersheds of Los Angeles County, with the Exception of Discharges Originating from  
7 the City of Long Beach MS4, Order No. R4-2012-0175, NPDES No. CAS004001  
8 (“Permit”).

9 1. **Names, Addresses, Telephone Numbers and Email Addresses of**  
10 **Petitioners.**

11 City of Duarte City of Duarte  
12 c/o Darrell George  
13 City Manager  
14 1600 Huntington Drive  
15 Duarte, CA 91010  
16 Phone: (626) 357-7931  
17 Fax: (626) 358-0018  
18 georged@accessduarte.com

19 City of Huntington Park City of Huntington Park  
20 c/o René Bobadilla  
21 City Manager  
22 6550 Miles Avenue  
23 Huntington Park, CA 90255  
24 Phone: (323) 584-6223  
25 Fax: (323) 584-6313

26 Please send notices for all Richard Montevideo, Esq.  
27 Petitioners to: Joseph Larsen, Esq.  
28 Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Phone: (714) 641-5100  
Fax: (714) 546-9035  
rmontevideo@rutan.com

29 2. **The Specified Action of the Regional Board Upon Which Review Is**  
30 **Sought.**

31 By this Petition, the Cities are challenging the Regional Board’s November 8, 2012  
32 adoption of the Permit. Included herewith as Exhibit “1” is a complete copy of the Subject  
33

1 Permit.

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

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

4 **4. Statement of Reasons the Action of the Regional Board Was**  
5 **Inappropriate and Improper.**

6 The Regional Board's adoption of the Permit was improper for the following  
7 reasons:

8 (1) The same attorneys unlawfully advised both the Regional Board Staff and  
9 the Regional Board itself both prior to and at the adjudicative hearing on the Permit, and  
10 thus violated Permittees' rights to due process of law.

11 (2) The Permit terms requiring a Permittee involved in a co-mingled discharge  
12 to prove it did not cause or contribute to an alleged exceedance, violates basic tenants of  
13 due process of law and is fundamentally unenforceable.

14 (3) The numerous provisions in the Permit requiring compliance with either  
15 water quality-based effluent limits, receiving water limits or other numeric limits, exceeds  
16 the Clean Water Act requirements and otherwise violate applicable State laws and policy.

17 (4) The Permit must be revised to be consistent with the maximent extent  
18 practicable ("MEP") standard provided for under the Clean Water Act ("CWA" or "Act"),  
19 by specifically allowing for deemed compliance through an iterative/adaptive management  
20 process.

21 (5) The numeric limits sought to be imposed under the Permit are in many cases  
22 impossible to comply with, and as such, are contrary to law.

23 (6) The "Discharge Prohibition" terms of the Permit impose a higher standard  
24 than the MEP standard on the permittees, and thus are inconsistent with federal law and are  
25 contrary to State law.

26 (7) The Permit terms requiring compliance with numeric limits, irrespective of  
27 the MEP standard, along with the new Discharge Prohibition terms, were not adopted in  
28

1 accordance with the requirements of California Water Code (“CWC”) sections 13000,  
2 13263 and 13241.

3 (8) The Permit is numerous Monitoring and Reporting Program requirements,  
4 and related terms throughout the Permit, were not developed in accordance with the  
5 requirements under CWC sections 13267, 13225 and 13165.

6 (9) The Permit terms concerning the development and implementation of a  
7 Watershed Management Program are vague and ambiguous, in that they fail to adequately  
8 describe the necessary elements and contents for an acceptable Watershed Management  
9 Program.

10 (10) The California Environmental Quality Act (“CEQA”) preempts the Planning  
11 and Land Development Program requirements contained in the Permit restricting and  
12 conditioning New Development and Redevelopment Projects by imposing various numeric  
13 design conditions on such projects, and by imposing new Low Impact Development  
14 (“LID”) and Hydro-modification requirements on all such projects.

15 **5. The Manner In Which The Cities Have Been Aggrieved.**

16 The Cities have been aggrieved by the Permit because they are Permittees under the  
17 Permit and are now being compelled to comply with Permit terms which were not  
18 developed or adopted in accordance with State or federal law, are not supported by the  
19 evidence, are contrary to law, were adopted in violation of basic tenants of due process,  
20 and/or are impossible to comply with.

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

22 Through this Petition, the Cities respectfully request that the State Board set aside  
23 the Permit, as its issuance was not supported by the evidence, and is arbitrary, capricious  
24 and contrary to law.

25 **7. A Statement of Points and Authorities In Support of the Legal Issues**  
26 **Raised In This Petition.**

27 A Memorandum of Points and Authorities is attached hereto and incorporated  
28

1 herein by this reference in this Petition.

2 **8. A Statement That The Petition Has Been Sent To The Regional Board.**

3 With the submission of this Petition to the State Board, a copy is simultaneously  
4 being forwarded to the Executive Officer of the Regional Board.

5 **9. A Statement That The Substantive Issues/Objections Were Raised**  
6 **Before the Regional Board.**

7 The substantive issues and objections raised in this Petition were all, in sum and  
8 substance, raised to the Regional Board in written and/or oral comments submitted in  
9 accordance with the written comment deadlines, and/or at the time of the Hearing on this  
10 matter on October 4th, and 5<sup>th</sup>, and November 8, 2012.

11 **10. Service of Petition.**

12 As set forth in the attached Proof of Service, this Petition is being served upon the  
13 following parties via electronic mail and overnight mail:

14 State Water Resources Control Board  
15 Office of Chief Counsel  
16 Jeannette L. Bashaw, Legal Analyst  
17 1001 "I" Street, 22<sup>nd</sup> Flr.  
18 Sacramento, CA 95814  
19 Fax: (916) 341-5199  
20 jbashaw@waterboards.ca.gov

21 California Regional Water Quality Control Board  
22 Los Angeles Region  
23 Samuel Unger, Executive Officer  
24 320 West 4<sup>th</sup> Street, Suite 200  
25 Los Angeles, CA 90013  
26 Fax: (213) 576-6640  
27 sunger@waterboards.ca.gov

28 Respectfully submitted

RUTAN & TUCKER, LLP  
RICHARD MONTEVIDEO  
JOSEPH LARSEN

26 Dated: December 7, 2012

27 By:   
28 Richard Montevideo  
Attorneys for Petitioners

1 RUTAN & TUCKER, LLP  
Richard Montevideo (State Bar No. 116051)  
2 Joseph Larsen (State Bar No. 244506)  
611 Anton Boulevard, Fourteenth Floor  
3 Costa Mesa, California 92626-1998  
Telephone: 714-641-5100  
4 Facsimile: 714-546-9035

5 Attorneys for Petitioners  
6 Cities of Duarte and Huntington Park  
7

8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
9

10  
11 In the Matter of:

12 The California Regional Water Quality  
13 Control Board, Los Angeles Region's  
Adoption of Waste Discharge Requirements  
14 for Municipal Separate Storm Sewer System  
(MS4) Discharges Within The Coastal  
15 Watersheds of Los Angeles County, Except  
Those Discharges Originating from the City  
16 of Long Beach MS4, Order No. R4-2012-  
0175, NPDES No. CAS004001

PETITIONERS CITIES OF DUARTE AND  
HUNTINGTON PARK MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF PETITION FOR REVIEW  
OF NOVEMBER 8, 2012 ACTION OF THE  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD, LOS  
ANGELES REGION, ADOPTING ORDER  
NO. R4-2012-0175, NPDES  
NO. CAS004001

[Water Code § 13320 and Title 23,  
CCR § 2050, *et seq.*]

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3 I. INTRODUCTION.....	1
4 II. THE PERMIT WAS INVALIDLY ADOPTED, AND A NUMBER	
5 OF THE TERMS/REQUIREMENTS WITHIN THE PERMIT WERE	
6 NOT BASED ON SUBSTANTIAL EVIDENCE, AND/OR ARE	
7 ARBITRARY, CAPRICIOUS OR OTHERWISE CONTRARY TO	
8 LAW.....	2
9 A. It Is Unlawful For The Same Attorney To Be Advising Both	
10 The Board Staff And The Board Itself Before And At The	
11 Adjudicative Hearing .....	2
12 B. The Permit Terms Requiring A Permittee Involved In A	
13 Comingled Discharge To Prove It Did Not Cause Or	
14 Contribute To An Alleged Exceedance Violates Basic Tenants	
15 Of Due Process Of Law And Is Fundamentally Unenforceable.....	9
16 C. The Numerous Provisions In The Permit Requiring	
17 Compliance With Various Forms Of Numeric Effluent Limits,	
18 Either Through QBELs Or Receiving Water Limits, Exceed	
19 The Clean Water Act’s Requirements For MS4 Permittees,	
20 And Otherwise Violate State Law And Policy .....	14
21 (a) The Inclusion Of Numeric Limits In The Form Of	
22 Numeric QBELs Or Receiving Water Limits, As A	
23 Matter Of Law, Go Beyond The MEP Standard And	
24 State Law and Policy.....	14
25 (b) The Permit Improperly Requires That The Permittees	
26 Comply With Numeric Limits .....	21
27 D. The Permit Must Be Revised To Be Consistent With The	
28 Maximum Extent Practicable Standard By Specifically	
Allowing For Deemed Compliance Through An Iterative /	
Adaptive Management Process .....	23
E. Requiring Strict Compliance With Numeric Limits In A	
Municipal NPDES Permit In Most Cases Is Requiring	
Compliance With Terms That Are Impossible To Achieve .....	30
F. The “Discharge Prohibition” Terms Of Part III.A Of The	
Permit, To The Extent They Attempt To Impose A Higher	
Standard Than The MEP Standard On The Permittees, Are	
Inconsistent With Federal Law And Contrary To State Law .....	33
(a) The MEP Standard Applies To Discharges Of Both	
“Non-Stormwater” And “Stormwater” From The MS4 .....	33
(b) The Definition Of “Stormwater” Includes “Dry	
Weather” Runoff.....	36

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

G. The Permit Terms Requiring Compliance With Numeric Limits, Irrespective Of The MEP Standard, Along With The New “Discharge Prohibitions” Terms, Were Not Adopted In Accordance With The Requirements Of CWC §§ 13000, 13263 And 13241 ..... 41

H. The Permit Monitoring, And Reporting Program Requirements, And Related And Similar Terms Throughout The Permit Were Not Developed In Accordance With Law, As The Regional Board Has Failed To Comply With Water Code Sections 13267, 13225 and 13165 ..... 51

I. The Watershed Program Requirements Within The Permit Lack Definition And Thus Must Be Revised To Provide Additional Specificity On The Contents Of Such Programs ..... 54

J. The California Environmental Quality Act (“CEQA”) Preempts The Planning And Land Development Program Requirements Set Forth In The Permit ..... 55

III. CONCLUSION ..... 59



**TABLE OF AUTHORITIES**

		<b><u>Page(s)</u></b>
1		
2		
3	<b>FEDERAL CASES</b>	
4	<i>Astoria Federal Savings and Loan Ass'n v. Solimino</i> (1991)	
5	501 U.S. 104 .....	37
6	<i>Connally v. General Const. Co.</i> (1926)	
7	269 U.S. 385 .....	54
8	<i>Defenders of Wildlife v. Browner</i> (9th Cir. 1999)	
9	191 F.3d 1159 .....	16, 32, 34-35, 41
10	<i>Gravned v. City of Rockford</i> (1972)	
11	408 U.S. 104 .....	54
12	<i>Hart v. McLucas</i> (9th Cir. 1979)	
13	535 F.2d 516 .....	37
14	<i>Hughev v. JMS Dev. Corp.</i>	
15	78 F.3d 1523 (11th Cir.) <i>cert. den.</i> , 519 U.S. 993 (1996) .....	30
16	<i>Humane Soc'y of the United States v. HVFG, LLC</i> (S.D.N.Y 2010)	
17	2010 US Dist LEXIS 44961 .....	12
18	<i>NRDC v. County of Los Angeles</i> (2011)	
19	673 F.3d 880 .....	11, 21, 29
20	<i>NRDC v. County of Los Angeles</i>	
21	2012 U.S. LEXIS 4832 (2012) .....	11
22	<i>Rapanos v. United States</i> (2006)	
23	547 U.S. 715 .....	10
24	<i>Sackett v. E.P.A.</i> (9th Cir. 2010)	
25	622 F.3d 1139 [reversed on other grounds. <i>Sackett v. E.P.A.</i> (2012) 132 S. Ct.	
26	1367] .....	11
27	<i>Tull v. United States</i> (1987)	
28	481 U.S. 412 .....	13
	<i>United States v. Diaz</i> (9th Cir. 1974)	
	499 F.2d 113 .....	54
	<i>United States v. Range Prod. Co.</i> (N.D. Tx. 2011)	
	793 F. Supp 2d 814 .....	12
	<b>STATE CASES</b>	
	<i>BIA of San Diego County v. State Board</i> (2004)	
	124 Cal.App.4th 866 .....	16, 32, 34-35

	<u>Page(s)</u>
1	
2	<b>STATE CASES (CONT.)</b>
3	<i>Brewer v. Patel</i> (1993)
4	20 Cal.App.4th 1017 ..... 37
5	<i>Burbank v. State Board</i> (2005)
6	35 Cal.4th 613 ..... 43-44, 46
7	<i>City of San Jose v. Superior Court</i> (1993)
8	5 Cal.4th 47 ..... 37
9	<i>Divers' Environmental Conservation Organization v. State Water Resources</i>
10	<i>Control Board (Divers' Environmental)</i> (2006)
11	145 Cal.App.4th 246 ..... 17, 31-32, 41
12	<i>Ferraro v. Chadwick</i> (1990)
13	221 Cal.App.3d 86 ..... 37
14	<i>Nightlife Partners v. City of Beverly Hills</i> (2003)
15	108 Cal.App.4th 81 ..... 8
16	<i>State of California v. City and County of San Francisco</i> (1979)
17	94 Cal.App.3d 522 ..... 12-13
18	<i>Tualatin River Keepers, et al. v. Oregon Department of Environmental Quality</i>
19	(2010)
20	235 Ore. App. 132 ..... 17-18
21	<b>FEDERAL STATUTES</b>
22	33 U.S.C.
23	section 1342(p) ..... 18
24	section 1342(p)(3)(B) ..... 34
25	section 1342(p)(3)(B)(ii) ..... 34
26	section 1342(p)(3)(B)(iii) ..... 16, 33
27	<b>STATE STATUTES</b>
28	California Water Code
29	section 13000 ..... 42
30	section 13165 ..... 53, 53
31	section 13225(a) ..... 53
32	section 13225(c) ..... 7, 52
33	section 13241 ..... 42, 44
34	section 13263 ..... 42
35	section 13263(a) ..... 42, 43
36	section 13267 ..... 52, 53
37	section 13385 ..... 29
38	California Public Resources Code
39	section 21080.1(a) ..... 58
40	section 21081 ..... 57
41	section 21081(b) ..... 59

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page(s)

**REGULATIONS**

40 Code of Federal Regulations

section 122.26(b)(13)..... 37  
section 122.26(a)(3)(vi) ..... 9, 10, 13  
section 122.44(k)(2)-(3)..... 18

**OTHER AUTHORITIES**

*In the Matter of Vos*, 2009 EPA ALJ LEXIS 8..... 12

1 **I. INTRODUCTION**

2 Petitioners, the Cities of Duarte and Huntington Park (“Cities” or “Petitioners”)  
3 respectfully petition the State Water Resources Control Board (“State Board”) to review  
4 the decision of the California Regional Quality Control Board, Los Angeles Region  
5 (“Regional Board” or “Board”) to adopt the National Pollutant Discharge Elimination  
6 System (“NPDES”) Permit for Municipal Separate Storm Sewer System (“MS4”)  
7 Discharges Within the Costal Watersheds of Los Angeles County, with the exception of  
8 discharges originating from the City of Long Beach, Order No. R4-2012-0175, NPDES  
9 No. CAS004001 (“Permit”). The Permit was adopted by the Regional Board after three  
10 (3) days of hearings on October 4th and 5th, and November 8, 2012. The Cities are  
11 Permittees under the Permit.

12 The Regional Board’s adoption of the Permit was improper for the following  
13 reasons:

14 1. The same attorneys unlawfully advised both the Regional Board Staff and  
15 the Regional Board itself, both prior to and during the adjudicative hearing, and thus  
16 violated the Permittees’ rights to due process of law.

17 2. The Permit terms requiring a Permittee involved in a co-mingled discharge,  
18 to prove it did not cause or contribute to an alleged exceedance, violates basic tenants of  
19 due process of law and is fundamentally unenforceable.

20 3. The numerous provisions in the Permit requiring compliance with either  
21 water quality-based effluent limits, receiving water limits or other numeric limits, exceeds  
22 the Clean Water Act requirements and otherwise violate applicable State laws and policy.

23 4. The Permit must be revised to be consistent with the maximum extent  
24 practicable (“MEP”) standard provided for under the Clean Water Act (“CWA” or “Act”),  
25 by specifically allowing for deemed compliance through an iterative/adaptive management  
26 process.

27 5. The numeric limits sought to be imposed under the Permit are in many cases  
28 impossible to comply with, and as such, are contrary to law.

1           6.       The “Discharge Prohibition” terms of the Permit impose a higher standard  
2 than the MEP Standard on the Permittees, and thus are inconsistent with federal law and  
3 are contrary to State law.

4           7.       The Permit terms requiring compliance with numeric limits, irrespective of  
5 the MEP standard, along with the new Discharge Prohibition terms, were not adopted in  
6 accordance with the requirements of California Water Code (“CWC”) sections 13000,  
7 13263 and 13241.

8           8.       The Permit Monitoring and Reporting Program requirements, and related  
9 terms throughout the Permit were not developed in accordance with the requirements  
10 under CWC sections 13267, 13225 and 13165.

11          9.       The Permit terms involving developing and implementing Watershed  
12 Management Programs are vague and require revision in that they fail to adequately  
13 describe the necessary elements for an acceptable Watershed Management Program.

14          10.      The California Environmental Quality Act (“CEQA”) preempts the Planning  
15 and Land Development Program requirements contained in the Permit restricting and  
16 conditioning New Development and Redevelopment Projects by imposing various numeric  
17 design conditions on such projects, and by imposing new Low Impact Development  
18 (“LID”) and Hydro-modification requirements on all such projects.

19 **II.    THE PERMIT WAS INVALIDLY ADOPTED, AND A NUMBER OF THE**  
20 **TERMS/REQUIREMENTS WITHIN THE PERMIT WERE NOT BASED**  
21 **ON SUBSTANTIAL EVIDENCE, AND/OR ARE ARBITRARY,**  
22 **CAPRICIOUS OR OTHERWISE CONTRARY TO LAW.**

23       A.    It Is Unlawful For The Same Attorney To Be Advising Both The Board Staff  
24            And The Board Itself Before And At The Adjudicative Hearing.

25           The Permit in question was adopted by the Regional Board after a three day public  
26 hearing, the submission of tens of thousands of pages of comments and exhibits, and the  
27 testimony of representatives of dozens of different parties and interested persons. Yet,  
28 both during the Hearing and in the Notice of Hearing, the Board claimed that: “Regional

1 Board staff, including the attorneys, is neither a party nor an interested person to these  
2 proceedings. Staff's sole function here is to advise and assist the Water Board in its  
3 consideration of [the] proposed Permit." (Transcript of October 4, 2012 hearing, p. 24 -  
4 All Hearing Transcripts including the 10/4, 10/5 and 11/8 Transcripts, will collectively  
5 hereafter be referred to as the "Transcript.") The initial Notice of Hearing on the Permit  
6 included similar statements, *i.e.*, that Board Staff was not a party to the proceeding, but  
7 went even further to attempt to justify this conclusion, by providing that the Permit  
8 proceeding did "not involve investigative, prosecutorial or advocacy functions," and, that  
9 "assigning a separate staff to advocate on behalf of a particular position would not further  
10 the development of the issues before the Los Angeles Water Board." (Hearing Notice, p.  
11 5.) Thus, although the Board Staff drafted the Permit terms, made recommendations,  
12 responded to countless written comments, and advocated the Permit's adoption in a  
13 "formal adjudicative" hearing conducted over three days of hearings, the Board somehow  
14 concluded that "Los Angeles Water Board Staff is not a party to this proceeding." The  
15 finding that Staff was not a party to the proceeding was plainly in error, and undoubtedly  
16 was made to avoid the Board having to comply with applicable due process requirements  
17 which prohibited the same attorneys from advising both the Board and its Staff. (*Id.*)

18 In fact, in the Hearing Notice, the Board also incredibly claimed that the adoption of  
19 this complex and far-reaching Permit, only involved "limited facts in dispute," and that  
20 there was no need to assign "separate staff to 'advocate' on behalf of a particular position."  
21 (Hearing Notice, p. 5.) The Board then admitted it was deciding to use the same attorneys  
22 to represent both it and its Staff during the process: "Staff's proposals, recommendations,  
23 and their participation in this proceeding exists for the purpose of advising and assisting  
24 the Los Angeles Water Board. Likewise, attorneys for the Los Angeles Water Board *will*  
25 *advise and assist the Los Angeles Water Board, which includes the board members and*  
26 *its entire staff.*" (*Id.*)

27 The fallacy of the claim that the Permit in question involved "limited facts in  
28 dispute," and thus justified, in the Board's mind, using the same attorneys as its Staff, is



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\*\*\*

The Water Board attorneys have urged me to recues myself and I presume that they would advise the Board that I should be disqualified.

\*\*\*

The result of this baseless and undetermined advice that I should recue myself is that the views and perspective that I was appointed to bring to this process will not be applied to this decision where that perspective could not be more relevant. Perhaps that was the intent of those who raised this question in the first place.

**I have repeatedly been told by counsel and staff that they are concerned about the possibility of lawsuits that could be threatened by the NRDC and others if I continue to participate. I wish that our counsel’s advice had been driven on what is right and what is just and not just on the fear of lawsuits from one side in these proceedings.**

**In my view, the staff and the Board should be just as concerned about potential litigation from those that may be brought by permittees who feel that the staff and the interest groups have further stacked the deck against them in eliminating this perspective in the proceeding.**

Governor Schwarsenegger appointed me to this Board to bring a prospective from municipal government. Governor Brown and the legislature have eliminated that conflict of interest and impediments to allow that unique perspective to be part of this discussion. **After all these good intensions, they have now been thwarted by special interest groups and knee-jerk reactions by attorneys.**

As a result, I am being disenfranchised and so too are those who believe that a balanced consideration of these important issues is vital to the legitimacy of this Permit. It is a shame that this body and this permit will be heard without my legally permitted participation.

I am not recusing myself because I believe that I have done anything inappropriate or that I am biased in any way. I do so only in an effort to preserve this process for the permit without subjecting you, the Board and the stakeholders, to any more drama and controversy.

**This is an important Permit for our region and it will have long-lasting effects that – and it deserves to be heard in the best-possible scenario. It is unfortunate that the fairness of this consideration is already tainted in this way. Thank you.**

(Transcript, pp. 16-20.) For the Regional Board to claim that the adoption process did not “involve investigative, prosecutorial or advocacy functions,” or that staff would not be



1 advocating “on behalf of a particular position,” was thus not only belied by the Hearing  
2 Notice itself and the sheer size of the Permit and the complexity of the issues, it was also  
3 belied by the advice given by the attorneys to Board Member Lutz before the formal  
4 hearing even commenced.

5         These comments at the very outset of the Hearing plainly demonstrated the need for  
6 the Board itself to have had separate counsel from the counsel for Staff, in order to insure  
7 the “fairness” of the process and necessary “due process.” The Board’s refusal to separate  
8 itself from Staff with separate counsel, clearly “tainted” the process, and, as suggested by  
9 Member Lutz, did so at the outset. Accordingly, the Board’s refusal to assign separate  
10 counsel was a violation of due process of law and at this time requires that the Permit be  
11 invalidated and sent back to the Regional Board for rehearing. (*Also see e.g.*, Transcript,  
12 comments of Executive Officer Sam Unger, p. 39-40: [“Finally, there have been a number  
13 of letters regarding process and procedures, most requesting a delay, objecting to the  
14 process for this hearing. ... I wish to point out that I must respectfully disagree with the  
15 objections for this process. ... Contrary to claims, this two-part process provides the  
16 parties with a greater opportunity to comment than the usual processes since they will have  
17 a chance to provide oral comments to the Board on the revised changes. As to the request  
18 for delay of the proceeding, I also strongly recommend that you not agree to this delay.”].)

19         Although there are numerous other examples of Board Staff taking positions on  
20 factual or legal issues that are contrary to those of the Permittees, one of the more  
21 important ones is the Board/Staff attorney’s comments on the requirement, or lack thereof,  
22 for the Board to conduct a “cost-benefit analysis.” In advising the Board on the issue, such  
23 attorney took a position that was/is clearly contrary to the positions taken by many of the  
24 Permittees in their comments, and was simultaneously advocating a position that was  
25 supportive of what Staff had done (or, in this instance, not done):

26                 **MS. McCHESNEY:** I just want to make a comment that -- and  
27 I’ll provide more detailed information on this and it’ll be in  
28 response to comments, too -- but the regional board is adopting the  
permit under the federal Clean Water Act, and there are certain  
constraints on the regional board in consideration of economics.  
So I’ll be providing more detail, but I understand that that

1 information is important and, you know, certainly the Board can  
2 consider economics, but, there are -- but there's no cost benefit  
analysis.

3 \*\*\*

4 So I'll provide further information on that and work with Sam, you  
5 know, what level of information is appropriate for the Board to be  
considering.

6 \*\*\*

7 But just to summarize it, there's no cost benefit analysis, so I just  
8 wanted to let you know.

9 (Transcript, pp. 257-59.) This advocated position by the Board/Staff's joint attorney was,  
10 moreover, legally inaccurate. First, when it comes to imposing reporting and monitoring  
11 requirements on local agencies, the CWC is very clear that a cost benefit analysis is  
12 required to be conducted. (*See e.g.*, CWC § 13225(c).) Second, federal law clearly does  
13 allow for a consideration of "economics" when determining the propriety of a permit term  
14 for a stormwater permit. The failure of the Board to provide legal separate legal counsel  
15 for itself and its Staff, was an undeniable violation of the Permittees' procedural rights to  
16 due process of law.

17 Moreover, this is not the first time this Regional Board has failed to provide this  
18 fundamental right to due process of law in an MS4 Permit hearing for Los Angeles  
19 County. In fact, in 2010, a Writ of Mandate was issued against this Board for doing this  
20 very same thing. Regional Board Order No. R4-2006-0074, involving the incorporation of  
21 the Santa Monica Bay Bacteria Total Maximum Daily Load ("SMB Bacteria TMDL") into  
22 the 2001 MS4 Permit, was specifically voided and set aside by the Los Angeles Superior  
23 Court because the Regional Board used the same attorneys that its Staff used in advocating  
24 the permit amendment. (*See* July 30, 2010 Peremptory Writ of Mandate and the July 16,  
25 2010 Judgment.) Importantly for purposes of the subject Permit, according to this prior  
26 Writ of Mandate, should the Regional Board "choose to conduct any further hearing upon  
27 remand at such hearing *the same person shall not act as both an advocate before the Los*  
28 *Angeles Regional Water Quality Control Board and an advisor to the Los Angeles*

1 *Regional Water Quality Control Board . . .*” (Writ, p. 2.) Accordingly, it appears that by  
2 once again using the same counsel for the adoption of a permit that also involved the  
3 incorporation of the SMB Bacteria TMDL into the permit, that the Board has not only  
4 violated the Permittees’ rights to due process of law, it has also violated the Court’s Writ  
5 of Mandate.

6 In *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, the  
7 Appellate Court found that Government Code sections 11425.10 and 11425.30 preclude a  
8 lawyer from both advocating on behalf of the staff of an administrative agency, and  
9 advising the decision-making body itself in the same administrative proceeding. There, the  
10 Court looked to the California Administrative Procedures Act (“APA”) as providing  
11 guidance on the elements the California Legislature believed were needed for conducting a  
12 fair administrative hearing. The Court concluded that “one of the basic tenants of the  
13 California APA ... is that, to promote both the appearance of fairness and the absence of  
14 even a probability of outside influence on administrative hearings, the prosecutorial and, to  
15 a lesser extent, investigatory aspect of administrative matters must be adequately separated  
16 from the adjudicatory function.” (*Id.* at 91.) The Appellate Court thus found that where  
17 “counsel performs as an advocate in a given case [he or she] is generally precluded from  
18 advising a decision-making body in the same case,” with the Court then finding that the  
19 “adjudicative function” must be separate from the “investigative, prosecutorial and  
20 advocacy functions within the agency.” (*Id.* at 92.)

21 Similar to the 2006 hearing conducted before the Regional Board to incorporate the  
22 SMB TMDL, the Regional Board utilized a “single” counsel to “advise and assist” both  
23 “the Board members and its entire staff,” in adopting the Subject permit. Because the  
24 substance of the hearing concerned the adoption of a very lengthy, highly complex and  
25 hotly disputed NPDES permit heard over a three day period, portions of which were being  
26 proposed by Regional Board Staff over the objections of numerous affected Permittees, the  
27 hearing on the Permit was unlawfully conducted with the “same” counsel advising and  
28 assisting both the Regional Board and its “entire staff.”

1           B.     The Permit Terms Requiring A Permittee Involved In A Comingled  
2                     Discharge To Prove It Did Not Cause Or Contribute To An Alleged  
3                     Exceedance Violates Basic Tenants Of Due Process Of Law And Is  
4                     Fundamentally Unenforceable.

5           Even though the Permit recognizes that “federal regulations state that co-permittees  
6 need *only comply* with permit conditions relating to discharges from the MS4 for which  
7 they are owners or operators (40 CFR § 122.26(a)(3)(vi))” (Permit, p. 23), it also then  
8 inconsistently provides that “*Permittees with co-mingled MS4 discharges are jointly*  
9 *responsible* for meeting the water quality-based effluent limitations and receiving water  
10 limitations assigned to MS4 discharges in this Order.” (*Id.*) The Permit goes on to provide  
11 that “*joint responsibility*” not only means that the Permittees with co-mingled MS4  
12 discharges are responsible for implementing programs in their respective jurisdictions, but  
13 further that they are responsible “to meet the water quality-based effluent limitations  
14 and/or receiving water limitations assigned to such comingled MS4 discharges.” (*Id.*)

15           Yet, the Permit, almost as if it is recognizing the illegality of its attempt to impose  
16 joint and several liability on Permittees, then attempts to diminish the impropriety of such  
17 terms by providing that:

18                     Additionally, this Order allows a Permittee to clarify and  
19                     distinguish their individual contributions and demonstrate that its  
20                     MS4 discharge did not cause or contribute to exceedances of  
21                     applicable water quality-based effluent limitations and/or receiving  
22                     water limitations. If such a demonstration is made, though the  
23                     Permittees’ discharge may comeingle with that of other Permittees,  
24                     the Permittee would not be held jointly responsible for the  
25                     exceedance of the water quality-based effluent limitation or  
26                     receiving water limitation. Individual co-permittees who  
27                     demonstrate compliance with the water quality-based effluent  
28                     limitations will not be held responsible for violations by non-  
                      compliance co-permittees.

25 (Permit, p. 23-24; also see Permit, p. 41 [*“Each Permittee is required to comply with the*  
26 *requirements of this Order applicable to discharges within its boundaries. Permittees are*  
27 *not responsible for the implementation of the provisions applicable to other Permittees.”*];  
28 and p. 142 [*“In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is*

1 *only responsible for discharges from the MS4 for which they are owners and/or operators.*  
2 *[ ] Where permittees have comingled discharges to the receiving water, compliance at the*  
3 *outfall to the receiving water or in the receiving water shall be determined for the group of*  
4 *Permittees as a whole unless an individual Permittee demonstrates that its discharge did*  
5 *not cause or contribute to the exceedance, pursuant to subpart v. below.”].)*

6 Accordingly, the Permit makes two things clear. First, it confirms that the Clean  
7 Water Act only imposes an obligation on Permittees to comply with permit conditions  
8 relating to discharges from an MS4 for which they are owners or operators. (See, e.g.,  
9 Permit, p. 41.) Second, however, it turns this undisputed legal principle, *i.e.*, that one is  
10 not responsible for another’s discharge, on its head, by flip flopping the burden of proof  
11 and presuming a Permittee is responsible for a comingled exceedance *unless the Permittee*  
12 *can “demonstrate that its MS4 discharge did not cause or contribute to exceedances of*  
13 *applicable water quality-based effluent limitations and/or receiving water limitations.” (Id.*  
14 *at pp. 23-24, 142.)* The theory of a presumed violation of law for a comingled exceedance  
15 is, however, plainly a theory that is contrary to the clear terms of the Clean Water Act and  
16 the Porter-Colon Act; and worse, violates fundamental principles of due process of law.

17 Under the regulations to the Clean Water Act, it is undisputed that “Co-permittees  
18 need only comply with permit conditions *relating to discharges* from the municipal  
19 separate storm sewers *for which they are operators.*” (40 CFR § 122.26(a)(3)(vi).)  
20 Irrefutable case authority, moreover, confirms that the Regional Board has the burden of  
21 proofing liability against an individual Permittee, regardless of whether or not there is a  
22 comingled exceedance, and that there is no such thing as “presumed,” nor joint and  
23 several liability under either the Clean Water Act or the Porter-Cologne Act.

24 For example, in an action seeking penalties under the Clean Water Act (“CWA”),  
25 the United States Supreme Court held that the burden of proof is placed squarely upon the  
26 shoulders of the agency or third-party plaintiff, in that said Plaintiff must establish that the  
27 discharger has violated the CWA: “[T]he agency must prove that the contaminant-laden  
28 waters ultimately reach covered waters.” (*Rapanos v. United States* (2006) 547 U.S. 715,

1 745.)

2 Similarly, according to the Ninth Circuit Court of Appeals:

3 Given that the CWA does not empower the EPA to bring an  
4 enforcement action on the basis of a violation of a compliance  
5 order alone, it follows that a court cannot assess penalties for  
6 violations of a compliance order under § 1319(d) **unless the EPA  
7 also proves, by a preponderance of the evidence, that the  
8 defendants actually violated the CWA in the manner alleged.**

9 ...

10 **We further interpret the CWA to require that penalties for  
11 noncompliance with a compliance order be assessed only after  
12 the EPA proves, in district court, and according to traditional  
13 rules of evidence and burdens of proof, that the defendants  
14 violated the CWA in the manner alleged in the compliance  
15 order.**

16 (*Sackett v. E.P.A.* (9<sup>th</sup> Cir. 2010) 622 F.3d 1139, 1145-47 [emphasis added] [reversed on  
17 other grounds, *Sackett v. E.P.A.* (2012) 132 S. Ct. 1367].)

18 In fact, in a recent case specifically involving alleged co-mingled discharges in the  
19 Los Angeles Region, the Ninth Circuit Court of Appeal expressly rejected the very theory  
20 of presumed liability the Regional Board is putting forth with the Permit, where the Court  
21 found as follows:

22 [W]e agree with the district court that, as the record is currently  
23 constituted, it is not possible to mete out responsibility for  
24 exceedances detected in the Santa Clara River and Malibu Creek  
25 (Claims 1 and 4). Like the district court, we are unable to identify  
26 the relationship between the MS4 and these mass-emissions  
27 stations. From the record, it appears that both monitoring stations  
28 are located within the rivers themselves. Plaintiffs have not  
endeavored to provide the Court with a map or cogent explanation  
of the inter-workings or connections of this complicated drainage  
system. We recognize that both the Santa Clara and Malibu Creek  
Monitoring Stations are downstream from hundreds or thousands  
of storm drains and MS4 channels. It is highly likely, but on this  
record nothing more than assumption, that polluted stormwater  
exits the MS4 controlled by the District and the County, and flows  
downstream in these rivers past the mass-emissions stations. To  
establish a violation, Plaintiffs were obligated to spell out this  
process for the district court's consideration and to spotlight how  
the flow of water from an MS4 "contributed" to a water-quality  
exceedance detected at the Monitoring Stations.

29 (*NRDC v. County of Los Angeles* (2011) 673 F.3d 880, 901, petition for writ of certiorari  
30 granted in part, on other grounds, *NRDC v. County of Los Angeles*, 2012 U.S. LEXIS 4832

1 (2012).)

2 Other courts have similarly recognized that the plaintiff in a CWA case bears the  
3 burden of proving a violation. (*See, e.g., United States v. Range Prod. Co.* (N.D. Tx.  
4 2011) 793 F. Supp 2d 814, 823 [court expressed doubt that civil penalties can be obtained  
5 without EPA ever proving defendant actually caused contamination]; *Humane Soc’y of the*  
6 *United States v. HVFG, LLC* (S.D.N.Y 2010) 2010 US Dist LEXIS 44961, \*21 [**“Plaintiff**  
7 **has demonstrated** sufficient undisputed material facts to prove that Defendant violated  
8 both its Slaughterhouse and CAFO SPDES Permits” (emphasis added)].) *In the Matter of*  
9 *Vos*, 2009 EPA ALJ LEXIS 8, an Administrative Law Judge similarly concluded as  
10 follows:

11 EPA failed to prove by preponderance of evidence that animal  
12 feedlot violated of 33 USCS § 1342 by its failure to apply for a  
13 National Pollutant Discharge Elimination System permit where,  
14 although EPA presented some evidence from which one could  
15 infer that feedlot discharged pollutants to waters of United States,  
16 such inferences were not equivalent of proof of actual discharge  
17 . . . EPA cannot be expected to be stationed at a given site to  
18 obtain evidence of a discharge, [but] the evidence EPA did muster  
19 falls far short of their burden to prove that there was an actual  
20 discharge from Vos’ feedlot to waters of the U.S . . . merely  
21 showing that water flows downhill is insufficient to meet EPA’s  
22 burden of proof.

23 (*In the Matter of Vos, supra*, [internal citations omitted] [emphasis added].)

24 Similarly, under California law the Regional Board plainly bears the burden of  
25 proving a violation of the Porter-Cologne Act. To start with, pursuant to Evidence section  
26 500, “[e]xcept as otherwise provided by law, a party has the burden of proof as to each  
27 fact the existence or nonexistence of which is essential to the claim for relief or defense  
28 that he is asserting.” The Porter-Cologne Act, of course, does not otherwise provide for  
the burden to be shifted to the defendant, and the language at issue in the Permit is  
therefore contrary to State law as well.

California Courts interpreting the Porter-Cologne Act have confirmed that a  
plaintiff does indeed bear the burden of proving a violation. (*See, State of California v.*  
*City and County of San Francisco* (1979) 94 Cal.App.3d 522, 530 [“once **plaintiff had**

1 *proved that there had been a discharge in violation of the Water Code* it became  
2 defendant's burden to establish, by a preponderance of the evidence, that the amount of  
3 penalty imposed should be less than the maximum"].) *City and County of San Francisco*  
4 clearly shows that even if a burden is shifted, it is shifted only *after* the actual violation is  
5 first proven *by plaintiff*.

6 Finally, in *Tull v. United States* (1987) 481 U.S. 412, there, the U.S. Supreme Court  
7 found that the Government's action for civil penalties under the Clean Water Act was a  
8 legal remedy akin to an 18<sup>th</sup> century action in debt, and thus, that there is a constitutional  
9 right to a trial by jury to determine liability. (*Id.* at 417-422.) The reasoning in *Tull* is  
10 analogous to the holding in *City and County of San Francisco, supra*, which held that the  
11 plaintiff has the burden of proving the threshold issue of liability under the Porter-Cologne  
12 Act. These cases all clearly show that liability under either the CWA or the Porter-  
13 Cologne Act triggers constitutional protections, and that the burden is on a plaintiff to  
14 prove a violation of one of these statutes, not the other way around. The regulations,  
15 furthermore, show quite conclusively that a particular alleged violation is only responsible  
16 for its own discharges and not discharges of others. (40 CFR § 122.26(a)(3)(vi).)

17 In this case, the Permit not only contains a presumption of liability if there is a co-  
18 mingled exceedance, to add insult to injury, it recognizes that a Permittee violating the Per-  
19 mit may incur penalties, including mandatory maximum penalties. (Permit, pp. 44-46.) In  
20 light of the above decisions, however, it is clear that the concept of "presumed guilt" is not  
21 an accepted principle of justice within the American System of Jurisprudence, and violates  
22 basic tenants of due process of law, plain statutory requirements and well-established  
23 precedent, to presume a Permittee is in violation of the Permit and subject to penalties  
24 wherever there is a co-mingled exceedance. As such, all such terms are contrary to law.



1 C. The Numerous Provisions In The Permit Requiring Compliance With  
2 Various Forms Of Numeric Effluent Limits, Either Through WQBELs Or  
3 Receiving Water Limits, Exceed The Clean Water Act's Requirements For  
4 MS4 Permittees, And Otherwise Violate State Law And Policy.

5 (a) *The Inclusion Of Numeric Limits In The Form Of Numeric WQBELs*  
6 *Or Receiving Water Limits, As A Matter Of Law, Go Beyond The*  
7 *MEP Standard And State Law and Policy.*

8 Part V of the Permit entitled "Receiving Water Limitations," has been explained in  
9 past State Board rulings as being an "iterative process." It was initially included and  
10 developed based on State Board Order No. 98-01, as amended by State Board Order  
11 No. 99-05. According to State Board Order No. 99-05, "so long as the Permittees have  
12 complied with the procedures [the iterative process procedures] set forth above and are  
13 implementing the revised SWMP, the Permittees do not have to repeat the same procedure  
14 for a continuing or recurring exceedances of the same receiving water limitations unless  
15 directed by the Regional Water Board to develop additional BMPs." (See State Board  
16 Order No. 99-05.)

17 In State Board Order No. 2001-15, the State Board confirmed that the process to be  
18 followed in municipal NPDES Permits towards achieving compliance with Water Quality  
19 Standards is to be an "iterative process," which focuses on timely improvements of BMPs:

20 **We will generally not require 'strict compliance' with water**  
21 **quality standards through numeric effluent limitations and we**  
22 **continue to follow an iterative approach, which seeks**  
23 **compliance over time. The iterative approach is protective of**  
**water quality, but at the same time considers the difficulty of**  
**achieving full compliance through BMPs that must be enforced**  
**throughout large and medium municipal storm sewer systems.**

24 (State Board Order No. 2001-15, p. 8.) In fact, the permit that was the subject of State  
25 Board Order No. 2001-15 was a San Diego MS4 NPDES Permit with the State Board  
26 finding that the San Diego Permit was deficient, because it did not make clear that the  
27 "iterative process" was to be applied to both the receiving water limitation language as  
28 well as the language concerning exceedances of water quality objectives. (*Id.*)

1 Similarly, in State Board Order No. 2001-12 DWQ, involving a general NPDES  
2 Permit for discharges of aquatic pesticides to surface waters, the State Board included  
3 specific language to be consistent with the “iterative process” discussed in Order No.  
4 2001-15. The Receiving Water Limitation language included in Order No. 2001-12 DWQ  
5 provided, in part, that: “*A discharger will not be in violation of receiving water limitation*  
6 *f.2 as long as the discharger has implemented the BMPs required by this general permit*  
7 *and the following procedure is followed: . . . .*” (See Order No. 2001-12 DWQ, p. 9.)

8 In addition, in a Memorandum issued by the then Chair of the Regional Board,  
9 Francine Diamond, in commenting on the need for the Regional Board to follow the  
10 “iterative process,” and not to “depart from its provisions in any significant way,”  
11 Ms. Diamond stated as follows:

12 The former provision on receiving water language and what has  
13 come to be known as the “iterative” process is language previously  
14 approved by the State Water Resources Control Board. This  
15 language has been contained in all municipal storm water permits  
16 in California since 1999. The State Board shaped the language as  
17 part of a precedential decision to address the concerns of  
18 dischargers and the environmental community, and to protect  
19 water quality. **Because the language arises from a State Board  
20 precedential decision, the Regional Board did not have the  
21 discretion to depart from its provisions in any significant way.**  
22 (See January 30, 2002 Memorandum from Francine Diamond  
23 (“Diamond Memo”), p. 1-2.)

24 Ms. Diamond went on to find that a “key aspect” of complying with the “iterative  
25 process” is for the Permittee to make “a good faith effort” to comply:

26 The receiving water compliance process outlined in the permit  
27 allows for each Permittee to work cooperatively with the Regional  
28 Board to identify additional measures, if required, to improve  
water quality to meet receiving water standards. If the measures  
adopted do not achieve that result, further measures can be  
developed. This iterative approach is intended to obtain progress  
over time. The provision is expressly intended to serve as the  
vehicle by which the Regional Board will obtain Permittee  
compliance with receiving water standards. **To that end, the key  
aspect is that a good faith effort be pursued by Permittees to  
utilize this process.** (Diamond Memo, p. 2.)

29 The Permit seeks “to modify the iterative process,” contrary to the process set forth  
30 under State Board Order No. 99-05, and contrary to the Diamond Memo, particularly with

1 the inclusion of language (specifically in Parts V. and VI.E.) that would hold Permittees in  
2 violation of the Permit, irrespective of their “good faith efforts” to comply and implement  
3 iterative MEP-compliant BMPs. For example, Part VI.E.2.e of the Permit requires a  
4 Permittee to demonstrate “[t]here are no violations of the final water quality-based effluent  
5 limitation” and “[t]here are no exceedance of applicable receiving water limitation for the  
6 specific pollutant in the receiving water(s) and/or downstream of, the Permittee’s  
7 outfall(s).” (Permit, p. 145.) The inclusion of this and other language in Parts V, and  
8 VI.E, as discussed below, is not required by federal law and is contrary to State law and  
9 policy. Such language was similarly not developed in accordance with the requirements of  
10 State law, as described below, namely CWC sections 13241, 13263 and 13000.

11 There can be no legitimate debate that federal law does not compel the use of  
12 numeric effluent limits in municipal NPDES permits. For example, in *BIA of San Diego*  
13 *County v. State Board* (2004) 124 Cal.App.4th 866, 874, the California Court of Appeal  
14 acknowledged that the CWA is to be applied differently to municipal Stormwater  
15 dischargers than to industrial Stormwater dischargers, finding as follows:

**In 1987, Congress amended the Clean Water Act to add provisions that specifically concerned NPDES permit requirements for storm sewer discharges. [Citations.] In these amendments, enacted as part of the *Water Quality Act of 1987*, Congress distinguished between industrial and municipal storm water discharges. . . . With respect to *municipal* storm water discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards without specific numeric effluent limits and instead to impose “controls to reduce the discharge of pollutants to the maximum extent practicable.”**

22 (*Id.*, citing 33 USC § 1342 (p)(3)(B)(iii) and *Defenders of Wildlife v. Browner* (9th Cir.  
23 1999) 191 F.3d 1159, 1163 (“*Defenders*”) (bolding and underling added, italics in  
24 original).)

25 In *Defenders*, the Ninth Circuit recognized the different approach taken by  
26 Congress for Stormwater, finding that “*industrial discharges must comply strictly with*  
27 *state water-quality standards,*” while Congress chose “*not to include a similar provision*  
28 *for municipal storm-sewer discharges.*” (191 F.3d at 1165, emphasis added.) The Court

1 found that “because 33 U.S.C. § 1342(p)(3)(B) is not merely silent regarding whether  
2 municipal discharges must comply with 33 U.S.C. § 1311,” but instead section  
3 1342(p)(3)(B)(iii) [of the CWA] “*replaces the requirements of § 1311 with the*  
4 *requirement that municipal storm-sewer dischargers ‘reduce the discharge of pollutants*  
5 *to the maximum extent practicable.’”* The Court then held that “*the statute*  
6 *unambiguously demonstrates that Congress did not require municipal storm-sewer*  
7 *discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).*” (*Id.* at 1165; also see  
8 *Divers’ Environmental Conservation Organization v. State Water Resources Control*  
9 *Board (Divers’ Environmental)* (2006) 145 Cal.App.4th 246, 256, emphasis added [“*In*  
10 *regulating stormwater permits the EPA has repeatedly expressed a preference for doing*  
11 *so by the way of BMPs, rather than by way of imposing either technology-based or water*  
12 *quality-based numerical limitations.*”].)

13 In the *Divers’ Environmental* case, the plaintiff brought suit claiming that an  
14 NPDES Permit issued to the United States Navy by the San Diego Regional Board was  
15 contrary to law because it did not incorporate waste load allocations (“WLAs”) from a  
16 TMDL as numeric effluent limits into the Navy’s permit. After discussing the relevant  
17 requirements of the Clean Water Act, as well as governing case authority, the Court of  
18 Appeal acknowledged that in regulating stormwater permits EPA “*has repeatedly*  
19 *expressed a preference for doing so by the way of BMPs, rather than by way of imposing*  
20 *either technology-based or water quality-based numerical limitations.*” (*Id.* at 256.) The  
21 Court went on to find that “*it is now clear that in implementing numeric water quality*  
22 *standards, such as those set forth in CTR, permitting agencies are not required to do so*  
23 *solely by means of a corresponding numeric WQBEL’s [water quality based effluent*  
24 *limit].*” (*Id.* at 262.)

25 Further, in a recent Appellate Court decision from the State of Oregon, *Tualatin*  
26 *River Keepers, et al. v. Oregon Department of Environmental Quality* (2010) 235 Ore.  
27 App. 132, the Oregon Court of Appeal similarly considered the need for WLAs from  
28 within a developed TMDLs to be enforced as strict numeric effluent limits within a

1 municipal NPDES permit. The petitioners in that case as well argued that the Oregon  
2 Department of Environmental Quality (“DEQ”) had erred because it issued a permit that  
3 did not “specify wasteload allocations in the form of numeric effluent limits.” (*Id.* at 137.)  
4 The Oregon Court discussed the purpose of a TMDL, noting it is required to be established  
5 for pollutants and waters of the State that are identified pursuant to section 1313(d) of the  
6 CWA, and went on to address petitioners’ contention that the wasteload allocations were  
7 required under State law to have been incorporated into the Permit “in a meaningful way,”  
8 *i.e.*, through the use of numeric effluent limits. (*Id.* at 147-148.)

9       What was not even argued in *Tualatin* was that federal law required a TMDL to be  
10 incorporated into a municipal NPDES Permit as a “numeric effluent limitation.” Instead,  
11 the Court found that under the CWA, best management practices were considered to be a  
12 “type of effluent limitation,” and that such best management practices were authorized to  
13 be used pursuant to the CWA, section 33 U.S.C. § 1342(p) as a means of controlling  
14 “storm water discharges.” (*Id.* at 141-142, citing 33 U.S.C. § 1342(p) and 40 CFR  
15 § 122.44(k)(2)-(3).) The Court in *Tualatin* concluded that Oregon law did not require that  
16 TMDLs be enforced through the use of numeric effluent limits, finding as follows:

17           The applicable TMDLs in this case set forth specific wasteload  
18 allocations for municipal storm water. The permits at issue, in  
19 turn, indicate the bodies of water for which TMDLs and wasteload  
20 allocations have been established and reference the specific TMDL  
21 for those bodies of water. **The permits provide in the “adaptive  
22 management” section that, “[w]here TMDL wasteload alloca-  
23 tions have been established for pollutant parameters associated  
24 with the permittee’s [municipal separate storm sewer system]  
25 discharges, the permittee must use the estimated pollutant load  
26 reductions (benchmarks) established in the [storm water  
27 management plan] to guide the adaptive management pro-  
28 cess.” . . . Adequate progress toward achieving assigned waste-  
load allocations will be demonstrated through the implementa-  
tion of best management practices that are targeted at TMDL-  
related pollutants.** Pursuant to that section, permittees must  
evaluate progress toward reducing pollutant loads “through the use  
of performance measures and pollutant load reduction benchmarks  
developed and listed in the [stormwater management plan].”

\* \* \*

**Although the permits do not themselves include numeric  
wasteload allocations like those set forth in the TMDLs, the  
TMDL wasteload allocations are clearly referenced in the**

1           permits, and the permits require implementation of best  
2           management practices, set forth in the storm water manage-  
3           ment plans, to make progress towards meeting those wasteload  
4           allocations. Again, best management practices are a type of  
5           effluent limitation that is used in municipal storm water per-  
6           mits. See 40 CFR § 122.44(k)(2)-(13). Furthermore, the permits  
7           incorporate benchmarks, through incorporation of the storm water  
8           management plan, which are specific pollutant load reduction  
9           goals for the permittees. Those measures are “permit require-  
10          ments” that properly incorporate the TMDL wasteload allocations.

11 (*Id.* at 148-149, emphasis added.)

12           Similarly, as discussed in part further below, it has long since been the policy of the  
13           State of California not to require the use of strict numeric limits for stormwater (urban  
14           runoff) dischargers, but rather to apply the MEP standard through an iterative BMP  
15           process. (See, e.g., State Board Order No. 91-04, p. 14 [“There are *no numeric objectives*  
16           or *numeric effluent limits* required at this time, either in the Basin Plan or any statewide  
17           plan that apply to storm water discharges.” p. 14]; State Board Order No. 91-03, [“*We . . .*  
18           *conclude that numeric effluent limitations are not legally required. Further, we have*  
19           *determined that the program of prohibitions, source control measures and ‘best*  
20           *management practices’ set forth in the permit constitutes effluent limitations as required*  
21           *by law.”]; State Board Order No. 96-13, p. 6 [“*federal laws does not require* the [San  
22           Francisco Reg. Bd] to dictate the specific controls.”]; State Board Order No. 98-01, p. 12  
23           [“Stormwater permits must achieve compliance with water quality standards, but they may  
24           do so by requiring implementation of BMPs *in lieu of numeric water quality-based*  
25           *effluent limitations.”]; State Board Order No. 2000-11, p. 3 [“*In prior Orders this Board*  
26           *has explained the need for the municipal storm water programs and the emphasis on*  
27           *BMPs in lieu of numeric effluent limitations.”]; State Board Order No. 2001-15, p. 8  
28           [“While we continue to address water quality standards in municipal storm water permits,  
          we also continue to believe that *the iterative approach*, which focuses on timely improve-  
          ments of BMPs, is appropriate.”]; State Board Order No. 2006-12, p. 17 [“*Federal*  
          *regulations do not require numeric effluent limitations for discharges of storm water”];  
          *Stormwater Quality Panel Recommendations to The California State Water Resources*****

1 *Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of*  
2 *Stormwater Associated with Municipal, Industrial and Construction Activities*, June 19,  
3 2006, p. 8 [*“It is not feasible at this time to set enforceable numeric effluent criteria for*  
4 *municipal BMPs and in particular urban dischargers.”*]; and an April 18, 2008 letter  
5 from the State Board’s Chief Counsel to the Commission on State Mandates, p. 6 [*“Most*  
6 *NPDES Permits are largely comprised of numeric limitations for pollutants. . . .*  
7 *Stormwater permits, on the other hand, usually require dischargers to implement*  
8 *BMPs.”*].)

9 Moreover, in a report issued by the National Research Council entitled *“Assessing*  
10 *the TMDL Approach to Water Quality Management,”* 2001, the NRC concluded as  
11 follows:

12 Many debates in the TMDL community have centered on the use  
13 of “phased” and “iterative” TMDLs. Because these terms have  
14 particular meanings, this report uses a more general term –  
15 **adaptive implementation. Adaptive implementation is, in fact,**  
16 **the application of the scientific method to decision-making. It**  
17 **is a process of taking actions of limited scope commensurate**  
18 **with available data and information to continuously improve**  
19 **our understanding of a problem and its solutions, while at the**  
20 **same time making progress toward attaining a water quality**  
21 **standard. (p. 90.)**

22 With the inclusion of the various numeric limits set forth in Parts V. and VI. E. of  
23 the Permit, which are designed to require the Permittees to develop and implement  
24 impracticable BMPs, *e.g.*, BMPs that are not economically feasible, where necessary to  
25 achieve strict compliance with receiving water limits or WQBELs, the Regional Board is  
26 imposing permit terms that are not required by federal law, and that are inconsistent with  
27 State law and policy. Further, as discussed below, imposing Permit terms that will result  
28 in the development and implementation of impracticable and/or technically or  
economically infeasible BMPs, are requirements that are, by definition, contrary to CWC  
sections 13263, 13241 and 13000.

1                   (b)     *The Permit Improperly Requires That The Permittees Comply With*  
2                                    *Numeric Limits.*

3             The Permit imposes a series of provisions designed to require that the Permittees  
4 strictly comply with numeric effluent limits, either through the incorporation of waste load  
5 allocations (“WLAs”) from total maximum daily loads (“TMDLs”) – which have been  
6 incorporated into the Permit as water quality based effluent limits (“WQBEL”) – or  
7 through numeric receiving water limits (which appear to require strict compliance with  
8 water quality standards, irrespective of compliance with an iterative/adaptive management  
9 process). (Permit, Parts IV, V and VI.E.) The Permit also makes clear that when the  
10 applicable numeric limits have not been complied with, that a Permittee will be subject to  
11 penalties, including, mandatory minimum penalties. (Permit, pp. 44-46.)

12             Initially, Part V of the Permit, entitled “Receiving Water Limitations,” prohibits  
13 “[d]ischarges from the MS4 that cause or contribute to the violation of receiving water  
14 limitations.” (Permit, p. 38.) Moreover, although the Permit allows the Permittees to  
15 follow an iterative/adaptive management process in attempting to comply with such  
16 receiving water limits, it similarly makes clear that this iterative/adaptive management  
17 process only relieves the Permittees of having to continue to develop new and additional  
18 iterative BMPs, and does not provide any form of protection from allegations that the  
19 Permittees have violated the receiving water limits language even if they are complying  
20 with the iterative/adaptive management process. (See Permit, p. 67 [“*The adaptive*  
21 *management process fulfills the requirements in Part V.A.4 to address continuing*  
22 *exceedances of receiving water limitations.*”].) In short, the Receiving Water Limitations  
23 section requires that the Permittee strictly comply with applicable water quality standards,  
24 or otherwise face prosecution and/or third party citizen suits. (See e.g., *NRDC v. County of*  
25 *Los Angeles*, 673 F.3d 880 (9th Cir. 2011), cert granted, 2012 U.S. LEXIS 4823.)

26             In Part IV entitled “Effluent Limitations and Discharge Specifications,” the Permit  
27 provides that WQBELs are being established in accordance with available TMDLs, and  
28 that: “Each permittee shall comply with applicable WQBELs as set forth Part IV E. of this



1 Order, pursuant to applicable compliance schedules.” (Permit p. 38.) In Part VI.E of the  
2 Permit, entitled “Total Maximum Daily Load Provisions,” the Permit then requires that the  
3 Permittees achieve: (1) all final WQBELs and/or receiving water limitations that become  
4 effective so as to implement the applicable TMDLs (Permit, Part VI.E.2, p. 141-145); (2)  
5 all WQBELs and/or receiving water limitations to implement WLAs in State-adopted  
6 TMDLs where the final compliance deadlines have already passed (Permit, Part VI.E.4,  
7 pp. 146-147); (3) the interim and final water quality-based effluent limits for trash, which  
8 may be achieved through the use of certified full-capture systems (Permit, Part VI.E.5, pp.  
9 147-154); (4) all interim WQBELs, except that compliance with interim WQBELs may be  
10 shown through the submission and implementation of an approved Water Quality  
11 Management Program (Permit, Part VI.E.2.d, pp. 143-144); and (5) the WLAs contained in  
12 applicable US EPA established TMDLs, through the use of best management practices  
13 (“BMPs”), along with a schedule for implementing the BMPs, in as short a time as  
14 possible through an approved Watershed Management Program – which presumably must  
15 again provide “reasonable assurances that ‘interim requirements and numeric milestones’  
16 will be achieved” (*see* Permit, Part VI.E.3, p. 145-146) [providing that if a Water Quality  
17 Management Program is not submitted, the Permittee must demonstrate compliance with  
18 the numeric WLAs in the US EPA TMDL “*immediately.*”].)

19 The Findings set forth under Part II.K of the Permit similarly provides that  
20 Permittees must achieve compliance with the numeric WQBELs, where it requires that the  
21 Permittees “comply with the TMDL Provisions in Part VI.E and Attachments L through R,  
22 which are consistent with the assumptions and requirements of the TMDL WLAs assigned  
23 to discharges from the Los Angeles County MS4.” (Permit, pp. 21-24.) Accordingly, as  
24 discussed herein, the incorporation of TMDLs into the Permit as numeric requirements,  
25 along with the need to strictly adhere to receiving water limits and effluent limitations in  
26 the Permit, represent the inclusion of requirements that ignore and exceed the MEP  
27 requirements under the Clean Water Act.

28 Moreover, with the exception of those Permit provisions that allow for compliance

1 through the submission of Watershed Management Plans, where “reasonable assurance”  
2 can, in fact, be provided, or through the use of full-capture measures for trash TMDLs,  
3 where such full-capture measures are technically and economically feasible, all such terms  
4 similarly represent requirements that cannot possibly be complied with. The inclusion of  
5 all such numeric limits within the Permit is not supported by sufficient findings, the  
6 evidence, or applicable law.

7 D. The Permit Must Be Revised To Be Consistent With The Maximum Extent  
8 Practicable Standard By Specifically Allowing For Deemed Compliance  
9 Through An Iterative / Adaptive Management Process.

10 As explained further below, the adaptive management process, i.e., an iterative  
11 process, as set forth in Part V of the Permit, does not provide the Permittees with any form  
12 of “safe harbor” or deemed compliance with the receiving water limitation section of the  
13 Permit, nor with the other terms of the Permit incorporating waste load allocations  
14 (“WLAs”) from TMDLs (Permit, Part VI.E). Instead, the Permit merely provides that  
15 complying with the “adaptive management process fulfills the requirements in V.A.4 to  
16 address continuing exceedances of receiving water limitations.” (Permit, p. 67.) Yet, this  
17 language does nothing to protect the Permittees from third-party citizen suits or  
18 enforcement actions under the Permit, even if the Permittees are, in fact, carrying out the  
19 adaptive management iterative process in good faith.

20 As discussed in detail above, rather than allowing municipalities to comply with the  
21 Permit terms through continued compliance with the adaptive management  
22 process/iterative process, i.e., to continue to implement BMPs that are consistent with the  
23 maximum extent practicable standard as envisioned by Congress, the Permit makes clear  
24 that regardless of the MEP standard, numeric WQBELs and receiving water limits must be  
25 achieved. As discussed, moreover, imposing numeric limits on municipalities, in lieu of  
26 allowing for deemed compliance through the iterative BMP process, is a significant change  
27 in permit-writing policy in California, and is a change that ignores the reality that iterative  
28 BMPs are the only means by which municipalities have to comply with numeric WQBELs

1 and receiving water limits. It is also a change that ignores the fact that requiring  
2 compliance with numeric limits will not in any way alter a Permittee's ability to achieve  
3 those limits or improve water quality.

4 In short, municipalities have no means of attempting to achieve compliance with  
5 numeric WQBELs and receiving water limits, other than through complying in good faith  
6 with an iterative/adaptive management process. The Regional Board's Permit which  
7 demands that the Permittees do more is simply not possible and will only result in more  
8 litigation and wasted resources, without any benefit to the public.

9 The Regional Board's desire to impose numeric limits on municipalities ignores the  
10 true limitations municipalities face when attempting to reduce the discharge of pollutants  
11 from their respective MS4 systems. There can be no dispute that municipal dischargers  
12 simply do not have the luxury of ceasing operations or installing a single or a series of  
13 filtration or treatment systems to eliminate pollutants from urban runoff. Municipalities do  
14 not generate the urban runoff, and cannot close a valve to prevent the rain from falling or  
15 runoff from entering the expansive storm drain system. As such, to, in effect, conclude  
16 that municipalities must somehow develop BMPs that go beyond the maximum extent  
17 practicable standard to meet numeric limits, is to require municipalities to develop and  
18 implement impracticable BMPs, *i.e.*, BMPs that are not technically and/or economically  
19 feasible.

20 The Permit includes a definition of the term "Maximum Extent Practicable" or  
21 "MEP." (Permit, Attachment A, p. A-11.) This definition of MEP is based on a  
22 February 11, 1993 Memorandum issued by the State Board's Office of Chief Counsel,  
23 subject "Definition of Maximum Extent Practicable" (hereafter "Chief Counsel Memo").

24 The definition of MEP in the Permit is as follows:

25 In selecting BMPs which will achieve MEP, it is important to  
26 remember that municipalities will be responsible to reduce the  
27 discharge of pollutants in storm water to the maximum extent  
28 **practicable. This means choosing effective BMPs, and rejecting  
applicable BMPs only where other effective BMPs will serve  
the same purpose, the BMPs would not be technically feasible,  
or the cost would be prohibitive.** The following factors may be  
useful to consider:

- 1           1.     Effectiveness: Will the BMP address a pollutant of  
2           concern?
- 3           2.     Regulatory Compliance: Is the BMP in compliance with  
4           storm water regulations as well as other environmental  
5           regulations?
- 6           3.     Public acceptance: Does the BMP have public support?
- 7           4.     **Cost: Will the cost of implementing the BMP have a**  
8           **reasonable relationship to the pollution control benefits to be**  
9           **achieved?**
- 10          5.     **Technical Feasibility: Is the BMP technically feasible**  
11          **considering soils, geography, water resources, etc.?**

12 (Permit, p. A-11.) As noted in the Chief Counsel Memo, the term “MEP” as used by  
13 Congress was intended to include a requirement “*to reduce the discharge of pollutants,*  
14 *rather than totally prevent such discharge,*” and Congress presumably applied an MEP  
15 standard, rather than a strict numeric standard with the “*knowledge that it is not possible*  
16 *for municipal discharges to prevent the discharge of all pollutants in storm water.*”

17 (Chief Counsel Memo, p. 2, emphasis added.)

18           Both the definition of MEP in the Permit and in the February 11, 1993, Chief  
19 Counsel Memorandum acknowledge the need to consider both “technical feasibility” and  
20 “cost,” including specifically asking: “*Will the cost of implementing the BMP have a*  
21 *reasonable relationship to the pollution control benefits to be achieved.*” In effect, both  
22 the Memorandum and the Permit’s definition of MEP confirm that the imposition of  
23 “impracticable” BMPs, whether technically or economically impracticable, to achieve a  
24 numeric effluent limit or otherwise, are requirements that go beyond what is required by  
25 Congress under the Clean Water Act, and are, in effect, terms that are not suitable for  
26 imposition on municipal dischargers.

27           Testimony provided at time of the Hearing on the Permit, including testimony from  
28 a USEPA representative, as well as both Staff and Board comments, all confirm that the  
MEP standard does not require the imposition of numeric limits, and further, that the  
Board has the flexibility to allow municipalities to be considered in compliance with their  
effluent limits and receiving water limitations, if they are implementing iterative BMPs.

1 The following comments at the hearing illustrate the point:

2 **MR. KEMMERER:** [John Kemmerer of USEPA]: The memo [a  
3 USEPA policy memo] makes a statement about -- let me see if I  
4 have it in front of me here -- but basically, you know, you should -  
5 - you know, **it's correct that it's not saying that's it's mandatory  
6 to use the numeric limits** but it's a recommendation to use  
7 numeric limits, to have those measurable and accountable means.

8 (Transcript, p. 224-25.)

9 **MS. PURDY:** We do believe the regional board does have some  
10 flexibility in this new permit with regard to how the receiving  
11 water limitations are implemented, and that's what we're looking at  
12 with regard to the watershed management program in providing  
13 these other alternative means of complying with the receiving  
14 water limitations through that watershed management program for  
15 non TMDL pollutants.

16 (Transcript, pp. 247-48.)

17 Ironically, even though Board and Staff, as well as USEPA, acknowledged that  
18 numeric limits were not required, and that compliance with water quality standards may be  
19 achieved through the use of iterative BMPs, at the same time they seemed convinced that  
20 numeric limits ultimately should be imposed upon the Permittees, if, in fact, there was  
21 actually no legitimate means to comply with the water quality standards through a BMP  
22 approach. Confusing as it may sound, the Board and Board Staff appeared to have  
23 misinterpreted the USEPA Policy Memorandum (discussed above by Mr. Kemmerer) and  
24 concluded that, in the context of complying with a TMDL, a performance-based deemed  
25 compliant approach (as utilized in the context of the Trash TMDL) would not be an  
26 acceptable means of compliance with other TMDL waste load allocations, unless feasible  
27 BMPs first existed to address the pollutant of concern in those TMDLs.

28 The following colloquy at the time of the Hearing on the Permit shows this  
irrational logic, wherein the Board concluded that the Trash TMDL performance based  
compliance approach was not acceptable for other TMDLs, and that numeric limits would  
thus be necessary because appropriate BMPs did not exist to address pollutants in non-  
trash TMDLs:

**MS. GLICKFELD:** The other thing I wanted to ask is why is it  
that we BMP approach in trash the [sic] and that we couldn't

1 fashion that in a scientifically valid way for the other TMDLs that  
2 are actually numeric and appear to be numeric and it's not a BMP  
approach which the cities seemed to like a lot.

3 \*\*\*

4 Is it that that doesn't work as well for other kind of pollutants? Or  
5 we don't know the right BMPs?

6 **MS. SMITH:** I'll take a stab at that. .... Those are going to be more  
7 complicated to develop, but our permit can accommodate if there's  
8 some sort of device that's -- that meets the water quality standard.  
9 We will --

10 **MS. GLICKFELD:** So for instance --

11 **MS. SMITH:** -- allow those to be used, so it's just the --

12 **MS. GLICKFELD:** -- Boeing developed an amazing new fabric  
13 that absorbs metals that's -- I think can be developed -- we think  
14 can be a key implementations tool for treating metals.

15 **MS. SMITH:** Yeah, if we can get media in the small --

16 **MS. GLICKFELD:** So what? You get to that point where you  
17 have a BMP that the -- that the -- that the municipalities and you  
18 think can happen, you can actually start to implement them, the  
19 BMPs, that were providing more certainty.

20 **MS. SMITH:** Definitely. And that was a great example of Boeing.

21 (Transcript, p. 221-23.) In short, the Board concluded that it was necessary to require  
22 strict compliance with numeric limits from final waste load allocations for all TMDLs  
23 (except the Trash TMDL) because there were no known effective BMPs that could address  
24 the pollutants required to be addressed by those TMDLs.

25 Yet, as discussed herein, the Clean Water Act clearly does not require the use of  
26 numeric limits in stormwater permits, and only requires compliance through the maximum  
27 extent practicable (MEP). Further, the MEP standard under the Clean Water Act is  
28 entirely consistent with the requirements of State law, and particularly with sections  
13000, 13263 and 13241. As such, the inclusion of numeric limits in this case for the final  
waste load allocations for the TMDLs was contrary to law, and was an arbitrary and  
capricious action.

In a letter from US EPA Headquarters, Benjamin H. Grumbles, to the Honorable

1 Bart Doyle, dated August 22, 2003, US EPA provided similar “guidance on the definition  
2 of Maximum Extent Practicable (MEP),” where it stated as follows:

3           You also ask EPA to provide guidance on the definition of  
4           Maximum Extent Practicable (MEP) and to provide examples of  
5           its practical application. Congress established MEP but did not  
6           provide language defining this standard. **EPA envisions MEP as  
7           an iterative process that considers such factors as conditions  
8           and beneficial uses of receiving wearers, MS4 size, climate,  
9           implementation schedules, current ability to finance the  
          program, hydrology, geology, and capacity to perform  
          operation and maintenance.** EPA understands the importance of  
          providing assistance to help communities implement MEP. We  
          are looking at the information gathered from evaluating many MS4  
          permits and programs. We hope to use this to provide examples of  
          good storm water programs.

10 (Grumbles Letter, p. 2.) US EPA has thus similarly confirmed that “MEP” is an iterative  
11 process that requires a consideration of various factors, including the practical conditions  
12 involved with compliance, as well as a City’s ability to pay for, *i.e.*, “finance,” the  
13 requirement.

14           In a June 2006 report prepared by the Expert Storm Water Quality Numeric  
15 Effluent limits Panel, a panel commissioned by the State Water Board, and entitled, “*Storm*  
16 *Water Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water*  
17 *Associated With Municipal, Industrial and Construction Activities*,” the Panel concluded,  
18 “*It is not feasible at this time to set enforcement numeric effluent criteria for municipal*  
19 *BMPs in particular for urban discharges.*” (*Id.* at p. 8.) Further, as explained below, in  
20 State Board Order after State Board Order, it has long since been the policy of the State of  
21 California that for municipal storm water, the emphasis must be “*on BMPs in lieu of*  
22 *numeric effluent limitations.*” (State Board Order No. 2000-11, p.3; *also see* State Board  
23 Order No. 2001-15, p. 8 [“*While we continue to address water quality standards in*  
24 *municipal storm water permits, we also continue to believe that the iterative approach,*  
25 *which focuses on timely improvements of BMPs, is appropriate.*”]; State Board Order No.  
26 2006-12, p. 17 [“Federal regulations do not require numeric effluent limits for discharges  
27 of storm water.”]; and November 22, 2002 US EPA Memorandum entitled “*Establishing*  
28 *Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water*

1 *Sources as NPDES Permit Requirements based on those WLAs,” p. 4 [“EPA’s policy*  
2 *recognizes that because storm water discharges are due to storm events that are highly*  
3 *variable in frequency and duration and are not easily characterized, only in rare cases*  
4 *will it be feasible or appropriate to establish numeric limits for municipal and small*  
5 *construction storm water dischargers. ... Therefore, EPA believes that in these*  
6 *situations, permit limits typically can be expressed as BMPs and that numeric limits will*  
7 *be used only in rare instances.]*)

8       The ultimate outcome of imposing numeric effluent limits on municipalities will not  
9 be to improve water quality, but instead to increase litigation and attorneys fees in fighting  
10 enforcement actions and citizen suits (*see, e.g., NRDC v. County of Los Angeles, supra,*  
11 *673 F.3d 880*), and, as well, will subject municipalities to unnecessary penalty claims,  
12 including mandatory minimum penalties. (*See Permit, p. 45-46, citing CWC § 13385.*)  
13 The Permit must be reissued to recognize the technical and economic realities of  
14 attempting to reduce the discharge of pollutants in urban runoff, and that the numeric  
15 WQBELs and receiving water limits specifically be revised to allow for an MEP-BMP  
16 deemed compliance approach. In particular, this deemed compliance approach should be  
17 incorporated into Parts IV.A(2) and V.A of the Permit, as a part of the iterative/adaptive  
18 management process, and into Part VI.E of the Permit as deemed compliance with the  
19 WLAs from a TMDL, as well as deemed compliance with any applicable action level.

20       In sum, in connection with Part IV.A(2), Part V.A and Part VI.E (incorporating the  
21 various numeric WLAs in the TMDLs as numeric WQBEL and/or receiving water limits),  
22 the Permit should be revised to make clear that so long as the Permittees are implementing  
23 MEP compliant BMPs in good faith and in accordance with the iterative/adaptive manage-  
24 ment process, they shall be found to be in compliance with such Permit terms. It has long  
25 been recognized by the State Board, as well as the courts and US EPA, that the use of MEP  
26 compliant BMPs is, in fact, the only means by which municipalities have to comply with  
27 MS4 permit terms. Therefore, this long-recognized means of compliance should be  
28 incorporated into the Permit, and that the Permittees be deemed in compliance with all



1 such requirements so long as they are acting in good faith and implementing MEP  
2 complaint BMPs.

3 E. Requiring Strict Compliance With Numeric Limits In A Municipal NPDES  
4 Permit In Most Cases Is Requiring Compliance With Terms That Are  
5 Impossible To Achieve.

6 Several of the TMDLs incorporated into the Permit in the form of interim and/or  
7 final numeric limits, including those interim numeric limits that, in theory, may be  
8 complied with through the submission of Watershed Management Plans if “reasonable  
9 assurances” can be provided, are not possible to be complied with, and thus, are not  
10 appropriate for inclusion in the Permit.

11 Specifically, the various numeric limits imposed as a result of the following  
12 TMDLs are unobtainable: (1) the Bacteria TMDL for the Los Angeles River; (2) the  
13 US EPA adopted Long Beach City Beaches and Los Angeles River Estuary Bacteria  
14 TMDL; (3) the Dominguez Channel and Greater Los Angeles Harbor and Long Beach  
15 Harbor Waters Toxic Pollutants TMDL; (4) the Los Angeles River Metals TMDL; (5) the  
16 Los Cerritos Channel Metals TMDL; and (6) the Los Angeles River Trash TMDL (except  
17 where a city is able to physically and economically install deemed-compliant full-capture  
18 devices throughout all of the city.)

19 Nor is strict compliance with the numeric receiving water limits and, in effect, the  
20 water quality standards that do not have a TMDL associated with them, possible to achieve  
21 for the same reasons the TMDL-numeric limits are unachievable. As explained in the  
22 various comments submitted in connection with each of these TMDLs, meeting many of  
23 the interim or any of the final numeric WLAs from these TMDLs, if imposed as suggested  
24 with the existing language in the Permit, as numeric WQBELS, is simply not possible.

25 As a matter of law, the Clean Water Act does not require permittees to achieve the  
26 impossible. In *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523 (11th Cir.) cert. den., 519 U.S.  
27 993 (1996), the plaintiff sued JMS Development Corporation (“JMS”) for failing to obtain  
28 a storm water permit that would authorize the discharge of storm water from its

1 construction project. The plaintiff argued JMS had no authority to discharge any quantity  
2 or type of storm water from the project, i.e. a “zero discharge standard,” until JMS had first  
3 obtained an NPDES permit. (*Id.* at 1527.) JMS did not dispute that storm water was being  
4 discharged from its property and that it had not obtained an NPDES permit, but claimed it  
5 was not in violation of the Clean Water Act (even though the Act required the permit)  
6 because the Georgia Environmental Protection Division, the agency responsible for issuing  
7 the permit, was not yet prepared to issue such permits. As a result, it was impossible for  
8 JMS to comply. (*Id.*)

9 The Eleventh Circuit Court of Appeal held that the CWA does not require a  
10 permittee to achieve the impossible, finding that “Congress is presumed not to have  
11 intended an absurd (impossible) result.” (*Id.* at 1529.) The Court then found that:

12 In this case, once JMS began the development, compliance with  
13 the zero discharge standard would have been impossible.  
14 Congress could not have intended a strict application of the zero  
15 discharge standard in section 1311(a) when compliance is factually  
impossible. The evidence was uncontroverted that whenever it  
rained in Gwinnett County some discharge was going to occur;  
nothing JMS could do would prevent all rain water discharge.

16 (*Id.* at 1530.) The Court concluded, “*Lex non cogit ad impossibilia*: The law does not  
17 compel the doing of impossibilities.” (*Id.*) The same rule applies here.

18 The Clean Water Act does not require municipal permittees to do the impossible  
19 and comply with unachievable numeric limits. Because municipal permittees are  
20 involuntary permittees, that is, because they have no choice but to obtain a municipal  
21 storm water permit, the Permit, as a matter of law, cannot impose terms that are  
22 unobtainable. (*Id.*)

23 In this case, as reflected in the various comments submitted in connection with each  
24 of the then-proposed TMDLs, strictly complying with the various waste load allocations  
25 set forth in the TMDLs, and with the other numeric receiving water limits is not achievable  
26 by the Permittees, given the variability of the potential sources of pollutants in urban  
27 runoff, as well as the unpredictability of the climate in Southern California. In fact, as  
28 discussed above in *Divers, supra*, 145 Cal.App.4th 246: “In regulating storm water

1 permits the EPA has repeatedly expressed the preference for doing so by way of BMPs,  
2 rather than by way of imposing either technology-based or water quality-based numeric  
3 limitations.” (*Id.* at 256.) According to the *Divers* Court: “EPA has repeatedly noted,  
4 storm water consists of a variable stew of pollutants, including toxic pollutants, from a  
5 variety of sources which impact the receiving body on a basis which is only as predictable  
6 as the weather.” (*Id.* at 258.)

7 Similarly, in *BIA v. State Board*, *supra*, 124 Cal.App.4th 866, 889-90, also  
8 discussed above, after having recognized the “practical realities of municipal storm sewer  
9 regulation,” and the “physical differences between municipal storm water runoff and other  
10 pollutant discharges,” and finding that the maximum extent practical approach was a  
11 “workable enforcement mechanism” (*id.* at 873, 884), the Court there concluded that the  
12 MEP standard was purposefully intended to be highly flexible concept that balances  
13 numerous factors including “technical feasibility, costs, public acceptance, regulatory  
14 compliance and effectiveness.” (*Id.* at 889-90.)

15 For many of the numeric limits, the “technical” and “economic” feasibility to  
16 comply simply do not exist, and imposing such requirements that go beyond “the limits of  
17 practicability” (*Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1162), is nothing  
18 more than an attempt to impose an impossible standard on municipalities that cannot  
19 withstand legal scrutiny. Accordingly, the imposition of the various numeric limits as  
20 strict water quality-based effluent limits and/or receiving water limits is not only an  
21 attempt to impose an obligation that goes beyond the requirements of federal law, but  
22 equally important, represents an attempt to impose provisions that go beyond what is  
23 “practicable,” and in this case, beyond what is “feasible.” Because the law does not  
24 compel doing the impossible, the numeric limits to be incorporated into the Permit must be  
25 stricken.

1 F. The “Discharge Prohibition” Terms Of Part III.A Of The Permit, To The  
2 Extent They Attempt To Impose A Higher Standard Than The MEP  
3 Standard On The Permittees, Are Inconsistent With Federal Law And  
4 Contrary To State Law.

5 (a) *The MEP Standard Applies To Discharges Of Both “Non-*  
6 *Stormwater” And “Stormwater” From The MS4.*

7 Under Part III of the Permit, specifically Section A of Part III, the Permit attempts  
8 to require that each Permittee “prohibit non-stormwater discharges *through the MS4 to*  
9 *receiving waters* except where such discharges are either: . . .” (Permit, p. 27 This  
10 language, combined with the findings in the Permit (Permit, p. 21-24) appear to be  
11 designed to provide the Regional Board with yet additional authority to attempt to require  
12 the imposition of numeric limits on the Permittees, irrespective of the maximum extent  
13 practicable standard. Yet, the suggestion that the Clean Water Act authorizes the Regional  
14 Board to impose a standard beyond the MEP standard on so-called “non-stormwater”  
15 discharges, or otherwise, is expressly refuted by the plain language of the Clean Water  
16 Act. Similarly, it is not supported by the requirements of the Porter-Cologne Act.

17 The CWA expressly applies the MEP standard to all “pollutants” discharged “from”  
18 the MS4, whether the discharges are classified as “non-stormwater” or “stormwater.”  
19 Although “non-stormwater” is required to be “effectively prohibited” from entering “*into*”  
20 the MS4, the CWA does not treat discharges “*from*” the MS4 any differently if the  
21 “pollutants” in issue arose as a result of a “storm water” versus a “non-stormwater”  
22 discharge. (33 U.S.C. § 1342(p)(3)(B)(iii).) Instead, under the CWA, regardless of the  
23 nature of the discharge, *i.e.*, be it “storm water” or alleged “non-stormwater,” the MEP  
24 standard continues to apply. (*Id.*)

25 The language in the CWA requires municipalities to “require controls to reduce the  
26 discharge of *pollutants* to the maximum extent practicable.” (*Id.*) The CWA then applies  
27 the MEP standard to the “discharge of pollutants” from the MS4, not to the discharge of  
28 “stormwater” or “non-stormwater” from the MS4. As such, the Regional Board’s attempt

1 to “prohibit non-stormwater discharges through the MS4 to receiving waters” rather than  
2 into the “storm sewer,” (33 USC § 1342(p)(3)(B)(ii)), exceeds federal law and is not  
3 authorized under State law.

4 Section 1342(p)(3)(B) of the CWA entitled “Municipal Discharge” provides, in its  
5 entirety, as follows:

6 Permits for discharges **from** municipal storm sewers –

7 (i) may be issued on a system– or jurisdictional– wide basis;

8 (ii) shall include a requirement to effectively prohibit **non-**  
9 **stormwater** discharges **into** the storm sewers; and

10 (iii) shall require controls **to reduce the discharge of**  
11 **pollutants to the maximum extent practicable**, including  
12 management practices, control techniques and system, design and  
13 engineering methods, and such other provisions as the  
14 Administrator or the State determines appropriate for the control of  
15 such pollutants.

13 (33 U.S.C. § 1342(p)(3)(B), emphasis added.)

14 This language in the CWA has consistently been interpreted as requiring an  
15 application of the MEP standard to municipal discharges, rather than an application of a  
16 standard requiring strict compliance with numeric limits. Specifically, federal law only  
17 requires strict compliance with numeric effluent limits by industrial dischargers, but not by  
18 municipal dischargers. As the Ninth Circuit in *Defenders, supra*, 191 F.3d 1159 found,  
19 “Congress required municipal storm-sewer dischargers ‘to reduce the discharge of  
20 pollutants to the maximum extent practicable’ finding that the Clean Water Act was “*not*  
21 *merely silent*” regarding requiring “municipal” dischargers to strictly comply with numeric  
22 limits, but in fact found that the requirement for traditional industrial waste dischargers to  
23 strictly comply with the limits was “replaced” with an alternative requirement, i.e., “that  
24 *municipal* storm-sewer dischargers ‘reduce the discharge *of pollutants* to the maximum  
25 extent practicable . . . *in such circumstances, the statute unambiguously demonstrates*  
26 *that Congress did not require municipal storm-sewer discharges to comply strictly with*  
27 *33 U.S.C. § 1311(b)(1)(C)*. (*Id.* at 1165; emphasis added.)

28 Similarly, in *BIA, supra*, 124 Cal.App.4th 866, there as well the Appellate Court,

1 relying upon the Ninth Circuit’s holding in *Defenders*, agreed that “with respect to  
2 *municipal* stormwater discharges, Congress clarified that the EPA has the authority to  
3 fashion NPDES permit requirements to meet water quality standards without specific  
4 numeric effluent limits and instead to impose ‘controls to reduce the discharger *of*  
5 *pollutants* to the maximum extent practicable.’” (*Id.* at 874, emphasis added.) The Court  
6 of Appeal in the *BIA* Case explained the reasoning for Congress’ different treatment of  
7 Stormwater dischargers versus industrial waste dischargers when it stated that:

8 Congress added the NPDES storm sewer requirements to  
9 strengthen the Clean Water Act and making its mandate  
10 correspond to the practical realities of municipal storm sewer  
11 regulation. As numerous commentators pointed out, although  
12 Congress was reacting to the **physical differences between**  
13 **municipal storm water runoff and other pollutant discharges**  
14 that made the 1972 legislation’s blanket effluent limitations  
15 approach **impractical and administratively burdensome**, the  
16 primary points of the legislation was to address these administra-  
17 tive problems while giving the administrative bodies the tools to  
18 meet the fundamental goals of the Clean Water Act in the context  
19 of stormwater pollution. (*Id.* at 884, emphasis added.)

20 The Permit appears to attempt to “back door” numeric limits on to the  
21 municipalities by the altered “Discharge Prohibition” language, and on its face goes  
22 beyond what was required by Congress with the 1987 Amendments to the CWA.

23 In State Board Order No. 91-04, the State Board addressed the propriety of the 1990  
24 Municipal NPDES Permit for Los Angeles County, and particularly whether such permit,  
25 in order to be consistent with applicable State and federal law, was required to have  
26 included “numeric effluent limitations.” In addition to the State Board’s interchangeable  
27 use of the terms “storm water” and “urban runoff” when discussing the applicable standard  
28 to be applied under the CWA (*see* discussion below), the State Board confirmed that the  
MEP standard applies to the “*discharge of pollutants*” from the MS4, and made no  
mention of the need to apply a different standard if the “*discharge of pollutants*” arose  
from alleged “non-stormwater” rather than “storm water.” To the contrary, the State  
Board recognized the MEP standard applied to “pollutants in runoff,” irrespective of the  
source of the pollutants, finding as follows:

1 We find here also that the approach of the Regional Board,  
2 requiring the dischargers to implement a **program of best**  
3 **management practices** which will reduce **pollutants in runoff**,  
4 prohibiting non-stormwater discharges, is appropriate and proper.  
5 **We base our conclusion on the difficulty of establishing**  
6 **numeric effluent limitations which have a rational basis, the**  
7 **lack of technology available to treat storm water discharges at**  
8 **the end of the pipe, the huge expense such treatment would**  
9 **entail, and the level of pollutant reduction which we anticipate**  
10 **from the Regional Board's regulatory program.** (State Board  
11 Order No. 91-04, p. 16-17, emph. added.)

12 This State Board Order, and others as discussed above, all show that although there  
13 are two requirements imposed upon municipalities under the CWA, one requiring that  
14 municipalities effectively prohibit “non-stormwater” “into” the MS4, and a second  
15 requiring municipalities to “reduce the discharge of pollutants to the maximum extent  
16 practicable,” that the MEP standard applies to “*pollutants in runoff*” coming out of the  
17 MS4 system, regardless of whether such discharges are stormwater or non-stormwater.  
18 The only difference in the requirements to be imposed upon the municipalities between  
19 “storm water” and “non-stormwater,” involves the need for municipalities to adopt  
20 ordinances in order to “effectively prohibit non-stormwater discharges into the” MS4.

21 (b) *The Definition Of “Stormwater” Includes “Dry Weather” Runoff.*

22 The Permit also appears to improperly seek to classify all dry-weather runoff as  
23 “non-storm water,” and, therefore, to potentially impose a more stringent standard on  
24 Permittees for such dischargers, other than the MEP standard. Yet, the assertion that “dry  
25 weather discharges” do not also fall under the classification of “storm water,” is inaccurate  
26 and directly controverted by the federal regulations. In fact, that the definition of  
27 “stormwater” includes “urban runoff,” *i.e.*, dry-weather discharges, as well as precipitation  
28 events, has been admitted to by both the State Board and this Regional Board in the case of  
*City of Arcadia v. State Board* case, OCSC Case No. 06CC02974, Fourth Appellate  
District Case No. G041545 (hereafter the “*Arcadia Case*”), as well as by the NRDC, the  
Santa Monica Baykeeper and Heal the Bay. As such, any attempt to redefine the term  
“stormwater” to exclude “dry weather,” is contrary to law and should be rejected.

First, it is clear from the plain language of the regulations that the term

1 “stormwater” includes all forms of “urban runoff” in addition to precipitation events.  
2 Specifically, section 122.26(b)(13) reads as follows: “*Storm water* means storm water  
3 runoff, snow melt runoff, ***and surface runoff and drainage.***” (40 C.F.R. § 122.26(b)(13);  
4 italics in original, bolding and underlining added.) This definition starts with the inclusion  
5 of “storm water” and “snow melt runoff,” and is then further expanded to include not only  
6 “storm water” and “snow melt runoff,” but also “surface runoff” and “drainage.”

7 The Regional Board’s interpretation of this definition is an attempt to read the terms  
8 “surface runoff” and “drainage” out of the regulation. Such an interpretation is contrary to  
9 the plain language of the regulation itself, and is contrary to law. (*See e.g., Astoria*  
10 *Federal Savings and Loan Ass’n v. Solimino* (1991) 501 U.S. 104, 112 [“[W]e construe  
11 statutes, where possible, *so as to avoid rendering superfluous any parts thereof.*”]; *City of*  
12 *San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55 [“We ordinarily reject interpretations  
13 that render particular terms of a statute as mere surplusage, *instead giving every word*  
14 *some significance.*”]; *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 92 [“In construing  
15 the words of a statute . . . an interpretation *which would render terms surplusage should*  
16 *be avoided*, and every word should be given some significance, *leaving no part useless or*  
17 *devoid of meaning.*”]; *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1022 [“*We are*  
18 *required to avoid an interpretation which renders any language of the regulation mere*  
19 *surplusage.*”]; and *Hart v. McLucas* (9th Cir. 1979) 535 F.2d 516, 519 [“*[I]n the*  
20 *construction of administrative regulations, as well as statutes, it is presumed that every*  
21 *phrase serves a legitimate purpose and, therefore, constructions which render regulatory*  
22 *provisions superfluous are to be avoided.*”].)

23 Second, beyond the plain language of the federal regulation, prior orders of the  
24 State Board confirm that the term “urban runoff” is included within the definition of  
25 “storm water.” For example, in State Board Order No. 2001-15, the State Board regularly  
26 interchanges the terms “urban runoff” with “storm water,” and discusses the “controls” to  
27 be imposed under the Clean Water Act as applying equally to both. In discussing the  
28 propriety of requiring strict compliance with water quality standards, and the applicability



1 of the MEP standard in Order No. 2001-15, the State Board asserted as follows:

2 **Urban runoff** is causing and contributing to impacts on receiving  
3 waters throughout the state and impairing their beneficial uses. In  
4 order to protect beneficial uses and to achieve compliance with  
5 water quality objectives in our streams, rivers, lakes, and the  
6 ocean, we must look to controls on **urban runoff**. It is not enough  
7 simply to apply the technology-based standards of controlling  
8 discharges of pollutants to the MEP; where **urban runoff** is  
9 causing or contributing to exceedances of water quality standards,  
10 it is appropriate to require improvements to BMPs that address  
11 those exceedances.

12 While we will continue to address water quality standards in  
13 municipal storm water permits, we also continue to believe that the  
14 iterative approach, which focuses on timely improvements of  
15 BMPs, is appropriate. **We will generally not require “strict  
16 compliance” with water quality standards through numeric  
17 effluent limits and we will continue to follow a iterative  
18 approach, which seeks compliance over time.** The iterative  
19 approach is protective of water quality, but at the same time  
20 considers the difficulties of achieving full compliance through  
21 BMPs that must be enforced through large and medium municipal  
22 storm sewer systems. (Order 2001-15, p. 7-8; emphasis added.)

23 Moreover, at the urging of the petitioner in Order No. 2001-15, the State Board  
24 went so far as to modify the “Discharge Prohibition A.2” language, which was challenged  
25 by the Building Industry Association of San Diego County (“BIA”), because such  
26 Discharge Prohibition was not subject to the iterative process. The State Board found as  
27 follows in this regard: “The difficulty with this language, however, is that it is not  
28 modified by the iterative process. To clarify that this prohibition also must be complied  
with through the iterative process, Receiving Water Limitation C.2 must state that it is also  
applicable to Discharge Prohibition A.2. ... Language clarifying that the iterative approach  
applies to that prohibition is also necessary.” (State Board Order No. 2001-15, p. 9.)

29 The State Board further required that the Municipal NPDES permit challenged in  
30 that case be modified because the permit language was overly broad, as it sought to apply  
31 the MEP standard not only to discharges “from” MS4s, but also to discharges “into” MS4s,  
32 with the BIA claiming that it was inappropriate to require the treatment and control of  
33 discharges “prior to entry *into* the MS4,” and with the State Board agreeing that such a  
34 regulation of discharges “*into*” the MS4 was inappropriate. [*Id* at 9 [“We find that the

1 permit language is overly broad because it applies the MEP standard not only to discharges  
2 ‘from’ MS4s, but also to discharges “into’ MS4s.”.)

3 In State Board Order No. 91-04, the State Board specifically relied upon EPA’s  
4 Stormwater Regulations, to find that: “Storm water discharges, by ultimately flowing  
5 through a point source to receiving waters, are by nature more akin to non-point sources as  
6 they flow from diffuse sources over land surfaces.” (State Board Order No. 91-04, p. 13-  
7 14.) The State Board then relied upon EPA’s Preamble to said Stormwater Regulations,  
8 and quoted the following from the Regulation:

9 For the purpose of [national assessments of water quality], **urban**  
10 **runoff** was considered to be a diffuse source for non-point source  
11 pollution. From a legal standpoint, however, most **urban runoff** is  
12 discharged through conveyances such as separate storm sewers or  
other conveyances which are point sources under the [Clean Water  
Act]. 55 Fed.Reg. 47991. (State Board Order No. 91-04, p. 14;  
emphasis added.)

13 The State Board went on to conclude that the lack of any numeric objectives or  
14 numeric effluent limits in the challenged permit: “will not in any way diminish the  
15 permit’s enforceability or its ability to reduce *pollutants in storm water discharges*  
16 substantially. . . . In addition, the [Basin] Plan endorses the application of ‘best  
17 management practices’ rather than numeric limitations as a means of reducing the level of  
18 *pollutants in storm water discharges.*” (*Id.* at 14, emphasis added.) (*Also see* Storm  
19 Water Quality Panel Recommendations to the California State Water Resources Control  
20 Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm*  
21 *Water Associated with Municipal, Industrial and Construction Activities*, June 19, 2008, p.  
22 1 [“MS4 permits require that the discharge of pollutants be reduced to the maximum extent  
23 practicable (MEP)”], and p. 8 [“It is not feasible at this time to set enforceable numeric  
24 effluent criteria for municipal BMPs *and in particular urban dischargers.*”]; State Board  
25 Order No. 98-01, p. 12 [“*Storm water permits* must achieve compliance with water quality  
26 standards, but they may do so by requiring implementation of BMPs in lieu of numeric  
27 water quality-based effluent limits.”]; and State Board Order No. 2001-11, p. 3 [“In prior  
28 Orders this Board has explained the need for the *municipal stormwater programs* and the

1 emphasis on BMPs in lieu of numeric effluent limitations.”].)

2 It is further important to note that this interpretation of the term “stormwater” as  
3 including “urban runoff,” has been agreed to by both the Regional and State Boards, as  
4 well as by the NRDC, Heal the Bay, and the Santa Monica Baykeeper. Specifically, in the  
5 State and Regional Boards’ Opening Appellate Brief in the *Arcadia* Case, they agreed that  
6 the term “stormwater” is to include “urban runoff,” where they stated as follows:

7 “Storm water,” when discharged from a conveyance or pipe (such  
8 as a sewer system) is a “point source” discharge, but stormwater  
9 emanates from diffuse sources, including surface run-off following  
rain events (hence “storm water”) and urban run-off. (See the  
Boards’ Opening Appellate Brief in the *Arcadia* Case; emphasis  
added.)

10  
11 This definition of the term “storm water” as including “urban runoff,” was similarly  
12 accepted by the NRDC, the Santa Monica Baykeeper, and Heal the Bay (collectively,  
13 “Intervenors”) in the *Acadia* Case, where they stated in their briefing as follows:

14 For ease of reference, throughout this brief, the terms “urban  
15 runoff” and “stormwater” are used interchangeably to refer  
16 generally to the discharges from the municipal Dischargers’ storm  
17 sewer systems. The definition of “stormwater” includes “storm  
water runoff, snow melt runoff, and surface runoff and drainage.”  
(40 C.F.R. § 122.26(b)(13).) (See Intervenors’ Opening Appellate  
Brief in the *Arcadia* Case.)

18 In sum, in light of the plain language of the federal regulation defining the term  
19 “storm water” to include “urban runoff,” *i.e.*, “surface runoff” and “drainage” in addition  
20 to “storm water” and “snow melt,” and given the admissions by the State and Regional  
21 Boards and the Intervener Environmental Groups in the *Acadia* Case, it is clear that the  
22 term “storm water” as defined in the federal regulations, includes “surface runoff and  
23 drainage,” *i.e.*, “dry weather” runoff. Accordingly, there is no basis to treat “dry-weather  
24 runoff” any more stringent under the CWA than wet weather, and as such, there is no basis  
25 to apply a different standard than the MEP standard to dry weather.

26  
27  
28

1 G. The Permit Terms Requiring Compliance With Numeric Limits, Irrespective  
2 Of The MEP Standard, Along With The New “Discharge Prohibitions”  
3 Terms, Were Not Adopted In Accordance With The Requirements Of CWC  
4 §§ 13000, 13263 And 13241.

5 The receiving water limits in Part V of the Permit, the WQBEL requirements in  
6 Part IV.A(2) of the Permit, the incorporation of the WLAs from the various TMDLs into  
7 Part VI.E of the Permit as numeric WQBELs, and the “Discharge Prohibitions” language  
8 in Part III.A of the Permit, were not developed in accordance with the requirements of  
9 State law. With each of these Permit terms, the Regional Board is seeking (at different  
10 points in time) to require strict compliance with numeric limits, irrespective of whether  
11 such terms will result in the need to develop and implement “impracticable” BMPs that are  
12 not technically and/or economically feasible or cost effective. By imposing requirements  
13 that go beyond the MEP standard as defined in the Permit itself, *i.e.*, by adopting Permit  
14 terms that will result in cities having to implement “impracticable” BMPs to comply with  
15 such terms, the Regional Board is, by definition, seeking to impose Permit terms that go  
16 beyond the requirements of federal law, and similarly, that are contrary to CWC sections  
17 13241, 13263 and 13000.

18 As discussed above, federal law only require that municipal storm sewer  
19 dischargers “reduce the discharge of pollutants to the maximum extent practicable,” and  
20 specifically does not require that such dischargers comply with numeric effluent limits.  
21 (*See, e.g. Defenders, supra*, 191 F.3d 1159, 1165; *also see Divers’ Environmental, supra*,  
22 145 Cal.App.4th 246, 256, where the court found that: ***“In regulating stormwater permits***  
23 ***the EPA has repeatedly expressed a preference for doing so by the way of BMPs, rather***  
24 ***than by way of imposing either technology-based or water quality-based numerical***  
25 ***limitations.”***) As such, any attempt to impose numeric limitations as set forth in the  
26 Permit, requires compliance with the requirements of the California Porter-Cologne Act,  
27 namely in this instance, CWC sections 13263, 13241 and 13000.

28 It is evident from the plain language of the definition of MEP, that the Regional

1 Board's desire to force Permittees to attempt to comply with numeric limits is nothing  
2 more than an attempt to impose requirements on the Permittee that are not technically or  
3 economically feasible, or otherwise cost effective, and thus, that are not "reasonably  
4 achievable" or otherwise in compliance with the requirements of State law. In fact, the  
5 "maximum extent practicable" standard, as defined in the Permit and in the Chief Counsel  
6 Memo, requires the imposition of "practicable" BMPs only, considering the technical  
7 feasibility and costs of doing so, including whether the costs "of implementing the BMP  
8 have a reasonable relationship to the pollution control benefits to be achieved." (Permit,  
9 Appendix A, p. A-11.)

10 Similarly, as discussed below, CWC sections 13241, 13263 and 13000 all directly  
11 or indirectly require a consideration of "economics," as well as whether the terms in  
12 question are "reasonable achievable," including a balancing of the benefit of the  
13 requirement, e.g., "*the total values involved, beneficial and detrimental, economic and*  
14 *social, tangible and intangible*" (CWC § 13000), the "*water quality conditions that could*  
15 *reasonably be achieved through the coordinated control of all factors which affect water*  
16 *quality in the area*" (CWC § 13241), and the need to "take into consideration the  
17 beneficial uses to be protected" and the "*water quality objectives reasonably required for*  
18 *that purpose*" (CWC § 13263(a).)

19 Accordingly, the Permit terms that go beyond a maximum "practicability" standard  
20 will, by definition under the terms of the Porter-Cologne Act, go beyond what the  
21 Regional Board has the authority to impose under California law. In essence, as a matter  
22 of law, permit terms that go beyond "maximum practicability" are terms that go beyond  
23 the balancing, reasonableness and economic considerations and other considerations  
24 required before any such permit terms can lawfully be imposed under California law.  
25 Here, because, as the courts have found, the imposition of numeric limits in a municipal  
26 storm water permit go beyond what is required under federal law, *i.e.*, go beyond the MEP  
27 standard as discussed above, by definition they also go beyond the Regional Board's  
28 authority under State law. (See CWC §§ 13241, 13263 and 13000.)

1 Under the California Supreme Court’s holding in *Burbank v. State Board* (2005) 35  
2 Cal.4th 613 (“*Burbank*”), a regional board must consider the factors set forth in sections  
3 13263, 13241 and 13000 when adopting an NPDES Permit, unless consideration of those  
4 factors “would justify including restrictions that do not comply with federal law.” (*Id.* at  
5 627.) As stated by the *Burbank* Court, “**Section 13263 directs Regional Boards, when**  
6 **issuing waste discharge requirements, to take into account various factors including**  
7 **those set forth in Section 13241.**” (*Id.* at 625, emphasis added.) Specifically, the *Burbank*  
8 Court held that to the extent the NPDES Permit provisions in that case were not compelled  
9 by federal law, the Boards were required to consider their “economic” impacts on the  
10 dischargers themselves, with the Court finding that such requirement means that the Water  
11 Boards must analyze the “**discharger’s cost of compliance.**” (*Id.* at 618.)

12 The Court in *Burbank* thus interpreted the need to consider “economics” as  
13 requiring a consideration of the “cost of compliance” on the cities involved in that case.  
14 (*Id.* at 625 [“The plain language of *Sections 13263 and 13241* indicates the Legislature’s  
15 intent in 1969, when these statutes were enacted, that a regional board **consider the costs**  
16 **of compliance when setting effluent limitations in a waste water discharge permit.**”].)  
17 The Court further recognized that the goals of the Porter-Cologne Act as provided for  
18 under Section 13000 are to “attain the highest water quality **which is reasonable,**  
19 considering all demands being made and to be made on those waters **and the total values**  
20 **involved, beneficial and detrimental, economic and social, tangible and intangible.**” (*Id.*  
21 at 618, citing § 13000.) Moreover, under section 13263(a), waste discharge requirements  
22 developed by the Regional Board: “shall implement any relevant water quality control  
23 plans that have been adopted, and take into consideration the beneficial uses to be  
24 protected, the water quality objectives **reasonably required for that purpose,** other waste  
25 discharges, the need to prevent nuisance, **and the provisions of Section 13241.**”  
26 (§ 13263(a).)

27 In addition, section 13241 compels the Boards to consider the following factors  
28 when developing NPDES Permit terms:

- 1 (a) Past, present, and probable future beneficial uses of water.
- 2 (b) Environmental characteristics of the hydrographic unit
- 3 under consideration, including the quality of water available
- 4 thereto.
- 5 (c) Water quality conditions that could reasonably be achieved
- 6 through the coordinated control of all factors which affect water
- 7 quality in the area.
- 8 (d) Economic considerations.
- 9 (e) The need for developing housing in the region.
- 10 (f) The need to develop and use recycled water.

9 (§ 13241.) In a concurring opinion in the *Burbank* case, Justice Brown made several  
10 significant comments regarding the importance of considering “economics” in particular,  
11 and the Section 13241 factors in general, when adopting an NPDES Permit that includes  
12 terms not required by federal law:

13 Applying this federal-state statutory scheme, it appears that  
14 throughout this entire process, the Cities of Burbank and Los  
15 Angeles (Cities) were unable to have economic factors considered  
16 because the Los Angeles Regional Water Quality Control Board  
(Board) – the body responsible to enforce the statutory framework  
– failed to comply with its statutory mandate.

17 For example, as the trial court found, the Board did not consider  
18 costs of compliance when it initially established its basin plan, and  
19 hence the water quality standards. The Board thus failed to abide  
20 by the statutory requirements set forth in Water Code section  
21 13241 in establishing its basin plan. Moreover, the Cities claim  
22 that the initial narrative standards were so vague as to make a  
23 serious economic analysis impracticable. Because the Board does  
24 not allow the Cities to raise their economic factors in the permit  
25 approval stage, they are effectively precluded from doing so. As a  
26 result, the Board appears to be playing a game of “gotcha” by  
27 allowing the Cities to raise economic considerations when it is not  
28 practical, but precluding them when they have the ability to do so.  
(*Id* at 632, J. Brown, concurring; emphasis added.)

Justice Brown went on to find that:

Accordingly, the Board has failed its duty to allow public  
discussion – including economic considerations – at the required  
intervals when making its determination of proper water quality  
standards. What is unclear is why this process should be viewed as  
a contest. State and local agencies are presumably on the same  
side. The costs will be paid by taxpayers and the Board should  
have as much interest as any other agency in fiscally responsible  
environmental solutions. (*Id* at 632-33.)

1           Accordingly, before adopting any permit terms that impose requirements that  
2 exceed those set forth under federal law, specifically including a municipal NPDES Permit  
3 that seeks to require compliance with numeric limits (*i.e.*, that go beyond the MEP  
4 standard provided under federal law), the Regional Board is required to comply with  
5 sections 13263, 13241 and 13000 of the CWC. However, in reviewing the findings in the  
6 Permit, as well as the Fact Sheet, and the Hearing Transcript, these requirements in the  
7 Porter-Cologne Act have clearly not been complied with.

8           In fact, there do not appear to be any findings, nor any evidence referenced in the  
9 Permit or in the Fact Sheet to show that the policy considerations set forth under section  
10 13000 have been met, that the “reasonableness” considerations under section 13263 have  
11 been considered, nor that the analysis set forth under section 13241 had been conducted,  
12 specifically in connection with numeric WQBELs, the numeric receiving water limits or  
13 the new Discharge Prohibition requirements. In short, there has been no legitimate  
14 consideration of whether such Permit terms “could reasonably be achieved,” in light of the  
15 “environmental characteristics” of the various water bodies in issue, their “economic”  
16 impacts on the dischargers, the impacts on “housing within the region,” or the “past,  
17 present, and probable future uses of the water” (*e.g.*, such as the bacteria TMDL objective  
18 of limiting bacteria from entering steep, concrete-lined flood control channels that are  
19 often fenced and posted, so as, to allow for swimming and other human recreation in there  
20 flood-control channels).

21           The failure of the Regional Board to include a sincere discussion of the  
22 13241/13263/13000 factors on pages F-137 – F-155 of the Fact Sheet, and to analyze the  
23 ability of the Permittees to technically, economically and otherwise “reasonably” comply  
24 with numeric limits, or even to discuss the Numeric Limits Panel’s Report, long-  
25 established State Board policy or the reasoning of Congress under the Clean Water Act in  
26 limiting the requirements to be imposed on municipal permittees to the MEP standard,  
27 shows the Regional Board’s inability to adopt such terms in accordance with State law.

28           Instead of addressing the real issues and including a legitimate discussion of the



1 13000/13263/13241 factors, incredibly the Fact Sheet seeks to rely on cost estimates from  
2 the 2001 Permit that do not reflect compliance with the numeric WQBELs and receiving  
3 water limits sought to be imposed under the new Permit terms. Nor is there a discussion of  
4 these factors in relation to the Discharge Prohibition language under Part III.A. As the  
5 evidence does not exist to support the necessary Findings for Permit terms that go beyond  
6 the MEP standard, all such provisions requiring compliance with numeric limits are  
7 contrary to law and are arbitrary and capricious, and their inclusion in the Permit constitute  
8 an abuse of discretion by the Regional Board.

9 The comments made by the various Board members at the Hearing show that, in  
10 this case, with respect to the various terms of the subject Permit, the Board failed to  
11 comply with the requirements of CWC sections 13000/13263/13241 when it came to  
12 considering economics and the “dischargers cost of compliance.” (*Burbank, supra*, 35  
13 Cal.App.4th 613, 618.) The comments quoted below by the various Board Members show  
14 that the Board Staff and the Board itself did not adequately consider and develop proper  
15 Permit terms, in light of the potential economic impacts and the dischargers cost of  
16 compliance principally because they did not fully and correctly assess the economic impact  
17 or the dischargers compliance costs:

18 **MS. GLICKFELD: Okay. So I am concerned about the costs.**

19 However, if there's a problem in the way that the – we're getting  
20 the cost reported to us and we think it's unevenly being reported,  
21 I'd like to see whether or not we could develop some new  
standards that everyone could agree on so that we actually **get the  
real costs.**

22 **The other thing is I don't think that it's appropriate for us to**  
23 **take what were estimated as costs in 2004 when we didn't even**  
24 **have close to this permit or the TMDLs and try to project out**  
25 **what this permit will cost. It will be very useful for me to see a**  
**listing of all the things that we – a summary listing of all the**  
**things that we are expecting to have done, when it's going to be**  
**done. And so that would be helpful to me.**

26 **I think that we have to look ahead at not just looking at what**  
27 **costs have been, but what they will be and when they will**  
**occur.**

28 \*\*\*

1 **MS. GLICKFELD:** ... And costs will be related to what people  
2 are going to have to do. There will be a variability in the way they  
3 do it, there's high variability in the number of -- in the  
4 responsibilities by size of the jurisdiction, the population, the way  
5 that they're developed, the density, all of those things I expect  
6 variability and there would be something strange if there wasn't.

7  
8 But I do think that we have to be better at this, not because -- not  
9 because we should compromise the water quality standards. I think  
10 we should be really paying attention to making sure that we  
11 achieve the water quality standards **at the lowest costs possible.**

12 So I think that would be important to say. Important. We have to  
13 be able to have numeric standards. We have to figure out ways of  
14 monitoring what people are spending and whether or not it's  
15 actually working and how much it's costing and **whether it's the  
16 most cost-effective way to go.**

17 (Transcript, 218-20.)

18 **MS. MEHRANIAN:** ... Except the only thing that I thought was  
19 still a **big hole was the cost.** Could we help having building cost  
20 model of a matrix of sorts that says these are the standard stuff that  
21 you have to do, and there's average cost of this?

22 \*\*\*

23 **So for us to just say, you know, well the cost numbers that are  
24 calculated are not accurate is not enough.**

25 (Transcript, p. 267.)

26 **MR. STRINGER:** ... One question on costs. I -- you know, the  
27 cities have talked a lot about this and I think I can empathize with  
28 the city managers' position and I -- I assume that concerns and  
29 fears are real. And Sam, I appreciate your prospective on it.

30 I guess, just from my perspective, it would be helpful for us to  
31 know, you know, what if -- what if we're wrong on costs? What if  
32 the costs are completely blown out of the park, and it's really a  
33 serious problem for the cities and they just can't, you know, for  
34 budgetary reasons, they just can't do the things that the permit  
35 requires them to do?

36 Is there anything -- I mean, what -- what happens then?

37 (Transcript, p. 239-40.)

38 **MR. YEE:** ... I'm not sure if it is a question or just some  
39 comments about cost and economics. I feel like, boy, now I know  
40 why they call economics the dismal science because I mean, I've  
41 heard so many different numbers and statistics and whatnot flying  
42 around.

43 You know, I think from a City's perspective, they look at this  
44 mostly from a cash flow perspective whereas, you know, the

1 statistics and whatnot say that the fewer percent is macro economic  
2 approach to this whole thing. **So I would really appreciate, as we**  
3 **move forward to, you know, to do a much better job with**  
4 **looking at the cost – the true cost and benefits in the economic**  
5 **of water quality.**

6 **And I think what would really help is – is we all adopted some**  
7 **consistent assumptions and consistent criteria by which we're**  
8 **going to look at economics and costs. So I would suggest that.**

9 (Transcript, p. 257.)

10 In short, the Board's comments at the time of the Hearing confirmed there was a  
11 "big hole" in the economic/cost analysis that had been provided by Staff, with one Board  
12 Member noting it was improper for Board Staff to rely upon "costs in 2004" that were  
13 based on permit terms which were not "close to this permit or the TMDLs," and another  
14 Board Member finding that it was not sufficient for Board Staff to simply claim that the  
15 Permittees' numbers were "not accurate."

16 Clearly, at the time of adoption of this Permit, the Board did not have a good  
17 understanding of the true potential "costs" or "economic" implications from the various  
18 terms in the Permit. As such, the Board failed to adopt the Permit in accordance with the  
19 requirements of CWC sections 13000/13263/13241.

20 In a study prepared back in 2002, by the University of Southern California Study,  
21 entitled "*An Economic Impact Evaluation of Proposed Storm Water Treatment for Los*  
22 *Angeles County,*" concluded that the cost of treating urban runoff in Los Angeles County  
23 could reach as high as \$283.9 billion over 20 years. (see also "Financial and Economic  
24 Impacts of Storm Water Treatment Los Angeles County NPDES Permit Area" presented to  
25 California Department of Transportation Environmental Program, Report I.D. #CTSWRT-  
26 98-72, November, 1998, by Stanley R. Hoffman Associates; "Cost of Storm Water  
27 Treatment for the Los Angeles NPDES Permit Area," June 1998, by Brown & Caldwell,  
28 prepared for the California Department of Transportation [giving "conservatively low"  
estimates of the costs of treating Los Angeles Area Storm Water of \$33-73 billion in  
capital costs, depending upon the level of treatment, with an additional \$68-\$199 million  
per year in operating and maintenance costs]; "Cost of Storm Water Treatment for

1 California Urbanized Areas,” October, 1998, prepared for California Department of  
2 Transportation, by Brown & Caldwell [concluding that “Statewide stormwater collection  
3 and treatment costs range from \$70.5 billion for Level 1 to \$113.7 billion for Level 3.  
4 Annual operations and maintenance costs range from \$145.2 million/year for Level 1 to  
5 \$423.9 million/year for Level 3.”]; and a Report entitled “*NPDES Stormwater Costs*  
6 *Survey*” by Brian K. Currier, Joseph M. Jones and Glen L. Moelle, California University,  
7 Sacramento dated January, 2005 along with Appendix H included therewith entitled  
8 “*Alternative Approaches to Stormwater Control*” prepared by the Center for Sustainable  
9 Cities University of Southern California.)

10 In a recent Economic Forecast prepared by the California State University, Long  
11 Beach, for the Sixteenth Annual Regional Conference for Southern California and its  
12 Counties, May 2010 (“Economic Forecast”), a grim picture was painted of the present state  
13 of the economy for local governments throughout the Region. According to this Economic  
14 Forecast:

15 Last year, the region’s economy shed 460,000 jobs. This was on  
16 top of the 138,000 jobs lost in 2008, raising the cumulative two-  
17 year loss to almost 600,000 jobs. The region has not experienced  
18 such a devastating job loss since the early 1990’s. Over a three  
19 year period, 1991-93, the region lost 470,000. At that time it was  
20 thought to be the most significant downturn in the Southern  
21 California regional economy since the Great Depression.”

22 \* \* \*

23 This recession is the longest and one of the steepest declines in the  
24 post World War II era. What made this recession different is that  
25 the economy had not faced a financial crises of such magnitude  
26 since the Great Depression. The housing bubble, subprime interest  
27 loans, lax lending standards, and securitization of mortgages led to  
28 the near collapse of financial markets, crating the first ever  
downtown in the global economy in the modern era. . . .  
Unemployment surged as employers shed 4.7 million jobs in 2009.  
Bringing the total jobs lost since the onset of the recessing to 8.4  
million.

26 (Economic Forecast, pp. 4 and 7; *also see* a series of PowerPoint presentations presented at  
27 the Economic Forecast Conference on May 13, 2010, concerning the poor state of the  
28 national and regional economy.)

1 Furthermore, in a Report entitled “*A Guide to Consideration of Economics Under*  
2 *the California Porter-Cologne Act*,” by David Sunding and David Ziberman, University of  
3 California, Berkeley, March 31, 2005, the authors reviewed the requirements of the Porter-  
4 Cologne Act regarding the need to consider “economics” and the other factors under  
5 section 13241, and concluded as follows:

6 While the requirement to consider economics under Porter-  
7 Cologne is absolute, the legislature and the courts have done little  
8 to particularize it. **This report is an attempt to fill the gap and**  
9 **provide the Board with guidance as to how economics can and**  
10 **should be considered as required by Porter-Cologne.** We write  
from our perspective as professional economists and academics  
who have engaged in water quality research and who have  
extensive experience with the application of economics to  
environmental regulation. (p. v.)

11 Although of little consolation, California is not alone in its difficulties in attempting  
12 to regulate urban runoff, as California’s problems are consistent with similar problems  
13 occurring throughout the United States, as reflected in a detailed 500 plus page report  
14 prepared for US EPA in 2008 by the National Research Council (“NRC”) of The National  
15 Academies entitled, *Urban Stormwater Management in the United States*. This 500 page  
16 Report was prepared at EPA’s request to “review [EPA’s] current permitting program for  
17 stormwater discharge under the Clean Water Act and provide suggestions for  
18 improvement.” (p. vii.) EPA’s desire for the Report was based upon the recognition that  
19 “*the current regulatory framework . . . was originally designed to address sewage and*  
20 *industrial wastes*” and “*has suffered from poor accountability and uncertainty about its*  
21 *effectiveness at improving water quality.*” (Emphasis added.) EPA’s 2008 NRC Report  
22 expressly acknowledges that reducing Stormwater pollution has proven to be “notoriously  
23 difficult,” with the NRC finding that the current approach to regulating Stormwater “*seems*  
24 *inadequate to overcome the unique challenges of stormwater.*” (p. 23.) The NRC went  
25 on to conclude that because of the differences between Stormwater and traditional  
26 discharges, the current regulatory approach is a “*poor fit.*” (*Id.* at 83.)

27 According to the NRC, compared with traditional effluent streams, “the  
28 uncertainties and variability surrounding both the nature of stormwater discharges and the

1 capabilities of various pollution controls . . . make it much more difficult to set precise  
2 limits in advance for stormwater sources.” (*Id.* at 84.) In sum, the NRC’s research showed  
3 that “*the technical demands of the TMDL program make for a particularly bad fit with*  
4 *the technical impediments already present in monitoring and managing stormwater.*”  
5 (*Id.* at 51.)

6 In light of the above-referenced evidence, a fair consideration of the factors set forth  
7 under sections 13000, 13263 and 13241, including specifically the need for a showing that  
8 the Permit terms, and specifically numeric limits, “could reasonably be achieved,” as well  
9 as the need to consider “economics,” and the need to consider all of the other factors in  
10 said sections, would result in the adoption of a different set of permit terms, and  
11 particularly terms that do not require compliance with numeric limits.

12 Instead, the Board, rather than including numeric limits in the Permit, should have  
13 included language that finds that the Permittees are in compliance with the various TMDL  
14 effluent limits and receiving water limits, if they are implementing MEP compliant BMPs,  
15 and complying with the iterative process set forth under State Board Order No. 99-05. It is  
16 this iterative process that has been outlined again and again by the State Board, and which  
17 has consistently been acknowledged by the courts as being the appropriate process to  
18 follow under the Clean Water Act. Because the Regional Board went beyond requiring  
19 compliance through an MEP compliant BMP process, and instead required compliance  
20 with numeric limits, it violated CWC sections 13000, 13263 and 13241.

21 H. The Permit Monitoring, And Reporting Program Requirements, And Related  
22 And Similar Terms Throughout The Permit Were Not Developed In  
23 Accordance With Law, As The Regional Board Has Failed To Comply With  
24 Water Code Sections 13267, 13225 and 13165.

25 The Permit contains numerous requirements involving monitoring, investigation,  
26 studies and reporting, specifically including an extensive set of Monitoring and Reporting  
27 Program Requirements as referenced in Parts VI.B and VI.E.5. Under California law,  
28 before any monitoring, reporting, investigation and study requirements may be imposed

1 upon a permittee, a cost/benefit analysis must be conducted and no such requirements can  
2 be imposed unless the Regional Board has first shown that the burden, including the costs  
3 of these requirements, “bear a reasonable relationship” to their need.

4 Section 13267, entitled “Investigation of Water Quality; Report; Inspection of  
5 Facilities,” provides in relevant part, as follows:

6 (a) A regional board, in establishing and reviewing any water  
7 quality control plan or waste discharge requirements, or in  
8 connection with any action relating to any plan or requirement  
9 authorized by this division, may investigate the quality of any  
10 waters of the state within its region.

11 (b) (1) In conducting an investigation specified in subdivision (a),  
12 the regional board may require that any person who has  
13 discharged, discharges, or is suspected of having discharged or  
14 discharging, or who proposes to discharge waste within its region,  
15 or any citizen or domiciliary, or political agency or entity of this  
16 State . . . that could affect the quality of waters within its region  
17 shall furnish, under penalty of perjury, **technical or monitoring  
18 program reports which the regional board requires. The  
19 burden, including costs, of these reports shall bear a  
20 reasonable relationship to the need for the report and the  
21 benefits to be obtained from the reports.** In requiring those  
22 reports, the regional board **shall provide the person with a  
23 written explanation** with regard to the need for the reports, and  
24 **shall identify the evidence** that supports requiring that person to  
25 provide the reports.

26 (§ 13267, emphasis added.) In addition to section 13267, section 13225(c) mandates that  
27 the Regional Board similarly conduct a cost/benefit analysis if it requires *a local agency* to  
28 investigate and report on technical factors involved with water quality. Section 13225(c)  
of the Water Code requires that each regional board, with respect to its region, shall:

29 (c) Require as necessary any state or local agency to investigate  
30 and report on any technical factors involved in water quality  
31 control or to obtain and submit analyses of water; **provided that  
32 the burden, including costs, of such reports shall bear a  
33 reasonable relationship to the need for the report and the  
34 benefits to be obtained therefrom.**

35 (§ 13225(c) (emphasis added); *see also* § 13165 [imposing this same requirement on the  
36 State Board where it requires a “local agency” to “investigate and report on any technical  
37 factors involved in water quality control; *provided that the burden, including costs, of  
38 such reports shall bear a reasonable relationship to the need for the reports and the*

1 *benefits to be obtained therefrom”*.)

2 Here, nearly every Board Member raised concerns with the “cost” of the Permit at  
3 the Hearing. (*See e.g.*, Transcript, 218:6-7 [“I’m concerned about the cost”], 240:4-9  
4 [“What if the costs are completely blown out of the park, and it’s a really serious problem  
5 for the cities and they just can’t, you know, for budgetary reasons, they just can’t do the  
6 things that the permit requires them to do?”], 251:11-15 [“And I know that some of my  
7 colleagues already touched upon it, but I think we need to take it very seriously because  
8 the truth of the matter is . . . that cities – many smaller cities specifically are really facing  
9 borderline bankruptcies”], 257:14-17 [“So I would really appreciate, as we move forward,  
10 you know, to do a much better job with looking at the cost – the true cost and benefits in  
11 the economics of water quality.”].)

12 In part, to address these concerns, a Board/Staff attorney proceeded to advise the  
13 Board (wrongly) that the Board should not be conducting, and was not required to conduct,  
14 a cost/benefit analysis. (Transcript, p. 259, [“ But just to summarize it, there's no cost  
15 benefit analysis, so I just wanted to let you know.”].) In short, the Board was wrongly  
16 advised by its Staff’s attorney that there was no obligation on the part of the Board to  
17 conduct any form of cost-benefit analysis, presumably including a cost benefit analysis as  
18 required under CWC sections 13225, 13165 or 13267. Of course the requirement for the  
19 Regional Board to have considered “the burden, including costs” of the reporting and  
20 monitoring obligations under the Permit, and whether those costs “bear a reasonable  
21 relationship to the need for the report and the benefits to be obtained therefrom” (CWC §  
22 13225(a), 13165 and 13267), cannot rightfully be characterized as anything other than as a  
23 cost-benefit analysis. As such, the Regional Board was wrongly advised that they did not  
24 need to conduct any form of cost-benefit analysis, and its failure to do so was error.

25 Because a cost/benefit analysis as required by CWC sections 13225, 13267 and  
26 13165 was not conducted, *i.e.*, because the evidence does not support a determination that  
27 the burden, including the costs of all of the monitoring, investigations, studying and  
28 reporting obligations in the Permit, bore a “reasonable relationship” to the need for this



1 information, the Permit was not adopted in accordance with law.

2 I. The Watershed Program Requirements Within The Permit Lack Definition  
3 And Thus Must Be Revised To Provide Additional Specificity On The  
4 Contents Of Such Programs.

5 It was long ago established that a regulation governing the conduct of an entity must  
6 be clear in its terms so that the regulated party is aware of what is expected of it when  
7 complying with such regulation. (See .e.g., *United States v. Diaz* (9th Cir. 1974) 499 F.2d  
8 113 [holding that the federal Antiquities Act of 1906 was unconstitutionally vague as to its  
9 definition of archeological objects receiving protection].)

10 In *Grayned v. City of Rockford* (1972) 408 U.S. 104, the United States Supreme  
11 Court explained the problems created by imposing vague requirements:

12 Vague laws offend several important values. First, because we  
13 assume that man is free to steer between lawful and unlawful  
14 conduct, we insist that laws give the person of ordinary intelli-  
15 gence a reasonable opportunity to know what is prohibited, so that  
16 he may act accordingly. Vague laws may trap the innocent by not  
17 providing fair warning. [Footnote omitted] Second, if arbitrary and  
18 discriminatory enforcement is to be prevented, laws must provide  
19 explicit standards for those who apply them. A vague law  
20 impermissibly delegates basic policy matters to policemen, judges,  
21 and juries for resolution on an *ad hoc* and subjective basis, with the  
22 attendant dangers of arbitrary and discriminatory application.

23 (*Id.* at 108-109; see also *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391 [“the  
24 terms of a penal statute creating a new offense must be sufficiently explicit to inform those  
25 who are subject to it what conduct on their part will render them liable to its penalties, is a  
26 well-recognized requirement, consonant alike with ordinary notions of fair play and the  
27 settled rules of law”].)

28 In the Permit in question there is considerable discussion involving “Watershed  
Management Programs,” including requirements governing the schedule for their  
development, language describing their general purpose and effect, as well as the process  
to be followed in their development. (Permit, pp. 47-67.) However, what is missing from  
this entire discussion is the “contents” of what an acceptable Watershed Management  
Program is to include. As written, it is unclear what program elements are to be included

1 in an acceptable Watershed Management Program; nor are the critical components of a  
2 Watershed Management Program even outlined in the Permit. There is simply no specific  
3 or general guidance in the Permit describing the necessary content of these programs. This  
4 practical problem with the lack of specificity of the contents of an acceptable Watershed  
5 Management Program, was even discussed by one Board Member at the Hearing:

6 **MS. MUNOZ:** Okay. Thank you. I would be, as a Board member,  
7 interested in looking at some of the watershed management plans  
8 are submitted especially ones **that you consider to be strongest  
and kind of effective that we might be able to share with other  
cities so that they don't reinvent the wheel.**

9 \*\*\*

10 **MR. MUNOZ:** I also think that it would be important to  
11 encourage the nonprofit world who have been working on a  
12 watershed management plans for quite some time. If they could  
13 collaborate with the cities because I think that there needs to be  
more cooperation, collaboration, exchanging of information, and  
talent with what has already been done previously.

14 (Transcript, p. 248-49.) Accordingly, given the lack of specificity on the necessary  
15 contents and elements for an acceptable Watershed Management Program, the Permit in  
16 question must be revised so that more specific direction is provided to the Permittees on  
17 what would constitute an acceptable Watershed Management Program, and so that the  
18 individual Permittees do not have to themselves each “reinvent the wheel” when  
19 developing such programs.

20 J. The California Environmental Quality Act (“CEQA”) Preempts The  
21 Planning And Land Development Program Requirements Set Forth In The  
22 Permit.

23 Part VI.D.7 entitled “Planning and Land Development Program” contained on  
24 pages 94-113 of the Permit, sets forth a series of requirements on Permittees when  
25 reviewing, approving and conditioning various New Development and Redevelopment  
26 projects within their respective jurisdictions. These provisions include, but are not limited  
27 to the following:

28 (1) the need to “[m]inimize the adverse impacts from storm  
water runoff on the biological integrity of Natural Drainage

1 Systems and the beneficial uses of water bodies in accordance with  
2 requirements under CEQA.”

3 (2) the need to “[m]inimize the percentage of impervious  
4 surfaces on land developments by minimizing soil compaction,  
5 during construction designing projects to minimize the impervious  
6 area footprint, and employing Low Impact Development (“LID”)  
7 design principle to mimic predevelopment hydrology through  
8 infiltration, evapotranspiration and rainfall harvest and use.”

9 (3) “Maintain existing riparian buffers and enhance riparian  
10 buffers when possible.”

11 (4) “Minimize pollutant loadings from impervious surfaces  
12 such as roof tops, parking lots, and roadways through the use of  
13 properly designed, technically appropriate BMPs (including  
14 Source Control BMPs such as good housekeeping practices), LID  
15 Strategies, and Treatment Control BMPs.”

16 (5) “Properly select, design and maintain LID and  
17 Hydromodification Control BMPs to address pollutants that are  
18 likely to be generated, reduce changes to pre-development  
19 hydrology, assure long-term function, and avoid the breeding of  
20 vectors.”

21 (6) “Prioritize the selection of BMPs to remove storm water  
22 pollutants, reduce storm water runoff volume, and beneficially use  
23 storm water to support an integrated approach to protecting water  
24 quality and managing water resources in the following order of  
25 preference: (a) On-site infiltration, bioretention and/or rainfall  
26 harvest and use. (b) On-site biofiltration, off-site ground water  
27 replenishment, and/or off-site retrofit.”

28 (Permit, pp. 94-95.) The requirements set forth in the Planning and Land Development  
29 provisions thus impose various numeric design criteria on New Development and  
30 Redevelopment projects to minimize the impervious surface area and control runoff from  
31 impervious surface through infiltration, bioretention and/or rainfall harvest and use.

32 (Permit, p. 94-109.) These requirements on New Development and Redevelopment  
33 projects generally include various storm water volume design requirements, a series of  
34 Low Impact Development requirements, and numerous hydromodifications requirements,  
35 all purportedly designed to reduce, to a level of insignificance, the adverse environmental  
36 impacts on water quality from any given “New Development” or “Redevelopment”  
37 project.

38 In effect, the provisions of the Permit involving the Planning and Land

1 Development Program are an attempt to override the requirements set forth under the  
2 California Environmental Quality Act (“CEQA”), and as such, are provisions that are  
3 plainly preempted by State law.

4 CEQA is a comprehensive statute that requires governments to analyze “projects”  
5 to determine whether or not they may have significant adverse environmental impacts. If  
6 such significant adverse impacts are determined to be present by the lead governmental  
7 agency, then under CEQA, these impacts must be disclosed and reduced or mitigated to the  
8 extent feasible. CEQA expressly provides “local” entities the discretion to analyze and  
9 approve projects that are deemed appropriate for the local community, following the  
10 environmental analysis directed by such statute, including an analysis of the impacts of the  
11 project on water quality. Moreover, CEQA provides local agencies the discretion to adopt  
12 a Statement of Overriding Considerations if the public agency finds that “specific  
13 overriding economic, legal, social, technological, or other benefits of the project outweigh  
14 the significant effects on the environment.” (Pub. Resources Code § 21081.)

15 By removing the Permittees discretion under CEQA to approve local developments  
16 projects, the Permit is in conflict with existing State law. For example, the Permit directly  
17 conflicts with CEQA by unlawfully attempting to direct how a local governmental agency  
18 is to approve a “project.” Under Public Resources Code section 21081.6(c), a responsible  
19 agency – such as the Regional Board – cannot direct how a lead agency is to comply with  
20 CEQA’s terms:

21 Any mitigation measures submitted to a lead agency by a  
22 responsible agency or an agency having jurisdiction over natural  
23 resources affected by the project shall be limited to measures  
24 which mitigate impacts to resources which are subject to the  
25 statutory authority of an definitions applicable to, that agency.  
26 **Compliance or non-compliance by a responsible agency or  
agency having jurisdiction over natural resources affected by a  
project with that requirement shall not limit ... the authority of  
the lead agency to approve, condition, or deny projects as  
provided by this division or any other provision of law.** (Pub.  
Resources Code § 21081.6(c); emphasis added.)

27 In direct conflict with the terms of CEQA, with the Permit, the Regional Board  
28 seeks to impose permit terms that plainly “limit the authority of the lead agency to

1 approve, condition, or deny projects.” Such requirements are contrary to CEQA.

2 In addition, Public Resources Code section 21081.1 states that the lead agency’s  
3 determination “shall be final and conclusive on all persons, including responsible agencies,  
4 unless challenged as provided in Section 21167.” It similarly provides that the lead agency  
5 “shall be responsible for determining whether an environmental impact report, a negative  
6 declaration, or mitigated negative declaration shall be required for any project which is  
7 subject to this division.” (Pub. Resources Code § 21080.1(a).) Further, no additional  
8 procedural or substantive requirements beyond those expressly set forth in CEQA may be  
9 imposed upon a local agency’s CEQA review process:

10 **It is the intent of the Legislature that courts, consistent with**  
11 **generally accepted rules of statutory interpretation, shall not**  
12 **interpret this division or the state guidelines adopted pursuant**  
13 **to Section 21083 in a manner which imposes procedural or**  
**substantive requirements beyond those explicitly stated in this**  
**division or in the state guidelines. (Pub. Resources Code**  
**§ 21083.1.)**

14 Furthermore, Public Resources Code section 21001 provides that local agencies  
15 “should not approve projects as proposed if there are feasible alternatives or feasible  
16 mitigation measures available which would substantially lessen the significant  
17 environmental effects of such projects.” (Pub. Resources Code § 21001.) However, the  
18 assumption with the Permit’s terms is that all runoff from a wide class of New  
19 Development and Redevelopment projects will result in significant adverse impacts on the  
20 environment, namely, water quality, and that such impacts must, therefore, be mitigated by  
21 those particular mitigation measures as mandated in the Permit. Thus, the Permit dictates  
22 the terms and results of environmental review, without regard for CEQA’s provisions, and  
23 eliminates a local governmental agency’s discretion to consider and approve feasible  
24 alternatives or mitigation measures – even if alternative measures may have a lesser effect  
25 on the environment. The Permit’s provisions, in short, would prevent environmentally  
26 preferable alternatives and/or mitigation measures, that would otherwise be required  
27 pursuant to CEQA, from being pursued and imposed.

28 In addition, Public Resources Code section 21002 provides that, “the Legislature

1 further finds and declares that in the event specific economic, social, or other conditions  
2 make infeasible such project alternatives or such mitigation measures, individual projects  
3 may be approved in spite of one or more significant effects thereof.” Pub. Resources Code  
4 section 21081(b) then establishes a mechanism for local agencies to approve projects with  
5 unmitigated adverse impacts, by adopting a “Statement of Overriding Considerations.”  
6 The Permit’s Land Development Planning Program requirements would thus unlawfully  
7 void a local agency permittee’s discretion to approve a project without the various design  
8 standards being met, even if that local entity adopts a Statement of Overriding  
9 Considerations.

10 Accordingly, the Permit’s Planning and Land Development Program requirements  
11 are in conflict with the provisions of CEQA, and cannot, therefore, lawfully stand.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Cities respectfully contend that the terms of the  
14 Permit are not supported by the Findings, that the Findings are not supported by the  
15 evidence, and that the Permit is otherwise arbitrary, capricious and contrary to law.

16 Respectfully submitted

17 RUTAN & TUCKER, LLP  
18 RICHARD MONTEVIDEO  
19 JOSEPH LARSEN

20 Dated: December 7, 2012

21 By:   
22 Richard Montevideo  
23 Attorneys for Petitioners

PETITION OF THE CITIES OF DUARTE  
AND HUNTINGTON PARK

**Exhibit “1”**

LOS ANGELES REGIONAL WATER  
QUALITY CONTROL BOARD ORDER NO.  
R4-2012-0175, NPDES NO. CAS004001



EDWARD G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Los Angeles Regional Water Quality Control Board**

**TO:** MS4 Permittees covered by NPDES Permit No. CAS004001

**FROM:** Renee A. Purdy *Renee A. Purdy*  
Section Chief  
**REGIONAL PROGRAMS**

**DATE:** December 5, 2012

**SUBJECT:** TRANSMITTAL OF FINAL ORDER NO. R4-2012-0175 -- 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 (NPDES PERMIT NO. CAS004001)

We are pleased to transmit to you the final National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit and waste discharge requirements for storm water and non-storm water discharges from the MS4 within the coastal watersheds of Los Angeles County, which was adopted by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) at its meeting on November 8, 2012.

The final Order and all attachments are posted on the Regional Board's website at the following address:

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/stormwater/municipal/index.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml)

Order No. R4-2012-0175 shall be effective as of December 28, 2012, 50 days from the date of Board adoption, as stated in the Order.

We look forward to working together with all Permittees to implement the permit. Should you have any questions, please do not hesitate to call me at (213) 576-6622 or Ivar Ridgeway at (213) 620-2150.

cc: John Kemmerer, Acting Director, Water Division, USEPA Region IX  
David Smith, NPDES Program Manager, USEPA Region IX  
Vicky Whitney, Deputy Director, DWQ, State Water Board  
Bruce Fujimoto, Manager, Surface Water/Permitting, State Water Board

MARA MEHRADIAN, CHAIR | SAMUEL UNGERL, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 W. 4<sup>th</sup> Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576 - 6600 • Fax (213) 576 - 6640  
<http://www.waterboards.ca.gov/losangeles>

**ORDER NO. R4-2012-0175  
NPDES PERMIT NO. CAS004001**

**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**

The municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (hereinafter referred to separately as Permittees and jointly as the Dischargers) from the discharge points identified below are subject to waste discharge requirements as set forth in this Order.

**I. FACILITY INFORMATION**

**Table 1. Discharger Information**

<b>Dischargers</b>	The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (See Table 4)
<b>Name of Facility</b>	Municipal Separate Storm Sewer Systems (MS4s) within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach MS4
<b>Facility Address</b>	Various (see Table 2)
The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) have classified the Greater Los Angeles County MS4 as a large municipal separate storm sewer system (MS4) pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2.	

**Table 2. Facility Information**

<b>Permittee (WDID)</b>	<b>Contact Information</b>	
<b>Agoura Hills (4B190147001)</b>	<b>Mailing Address</b>	30001 Ladyface Court Agoura Hills, CA 91301
	<b>Facility Contact, Title, and E-mail</b>	Ken Berkman, City Engineer kberkman@agoura-hills.ca.us

Permittee (WDID)	Contact Information	
Alhambra (4B190148001)	Mailing Address	111 South First Street Alhambra, CA 91801-3796
	Facility Contact and E-mail	David Dolphin ddolphin@cityofalhambra.org
Arcadia (4B190149001)	Mailing Address	11800 Goldring Road Arcadia, CA 91006-5879
	Facility Contact, Title, Phone, and E-mail	Vanessa Hevener, Environmental Services Officer (626) 305-5327 vhevener@ci.arcadia.ca.us
Artesia (4B190150001)	Mailing Address	18747 Clarkdale Avenue Artesia, CA 90701-5899
	Facility Contact, Title, and E-mail	Maria Dadian, Director of Public Works mdadian@cityofartesia.ci.us
Azusa (4B190151001)	Mailing Address	213 East Foothill Boulevard Azusa, CA 91702
	Facility Contact, Title, and E-mail	Carl Hassel, City Engineer chassel@ci.azusa.ca.us
Baldwin Park (4B190152001)	Mailing Address	14403 East Pacific Avenue Baldwin Park, CA 91706-4297
	Facility Contact, Title, and E-mail	David Lopez, Associate Engineer dlopez@baldwinpark.com
Bell (4B190153001)	Mailing Address	6330 Pine Avenue Bell, CA 90201-1291
	Facility Contact, Title, and E-mail	Terri Rodrigue, City Engineer trodrigue@cityofbell.org
Bell Gardens (4B190139002)	Mailing Address	7100 South Garfield Avenue Bell Gardens, CA 90201-3293
	Facility Contact, Title, and Phone	John Oropeza, Director of Public Works (562) 806-7700
Bellflower (4B190154001)	Mailing Address	16600 Civic Center Drive Bellflower, CA 90706-5494
	Facility Contact, Title, and E-mail	Bernie Iniguez, Environmental Services Manager biniguez@bellflower.org
Beverly Hills (4B190132002)	Mailing Address	455 North Rexford Drive Beverly Hills, CA 90210
	Facility Contact, Title, and E-mail	Vincent Chee, Project Civil Engineer kgettler@beverlyhills.org
Bradbury (4B190155001)	Mailing Address	600 Winston Avenue Bradbury, CA 91010-1199
	Facility Contact, Title, and E-mail	Elroy Kiepke, City Engineer mkeith@cityofbradbury.org
Burbank (4B190101002)	Mailing Address	P.O. Box 6459 Burbank, CA 91510
	Facility Contact, Title, and E-mail	Bonnie Teaford, Public Works Director bteaford@ci.burbank.ca.us
Calabasas (4B190157001)	Mailing Address	100 Civic Center Way Calabasas, CA 91302-3172
	Facility Contact, Title, and E-mail	Alex Farassati, ESM afarassati@cityofcalabasas.com
Carson (4B190158001)	Mailing Address	P.O. Box 6234 Carson, CA 90745
	Facility Contact, Title,	Patricia Elkins, Building Construction Manager

Permittee (WDID)	Contact Information	
	and E-mail	pelkins@carson.ca.us
Cerritos (4B190159001)	Mailing Address	P.O. Box 3130 Cerritos, CA 90703-3130
	Facility Contact, Title, and E-mail	Mike O'Grady, Environmental Services mo'grady@cerritos.us
Claremont (4B190160001)	Mailing Address	207 Harvard Avenue Claremont, CA 91711-4719
	Facility Contact, Title, and E-mail	Craig Bradshaw, City Engineer cbradshaw@ci.claremont.ca.us
Commerce (4B190161001)	Mailing Address	2535 Commerce Way Commerce, CA 90040-1487
	Facility Contact and E-mail	Gina Nila gnila@ci.commerce.ca.us
Compton (4B190162001)	Mailing Address	205 South Willowbrook Avenue Compton, CA 90220-3190
	Facility Contact, Title, and Phone	Hien Nguyen, Assistant City Engineer (310) 761-1476
Covina (4B190163001)	Mailing Address	125 East College Street Covina, CA 91723-2199
	Facility Contact, Title, and E-mail	Vivian Castro, Environmental Services Manager vcastro@covinaca.gov
Cudahy (4B190164001)	Mailing Address	P.O. Box 1007 Cudahy, CA 90201-6097
	Facility Contact, Title, and E-mail	Hector Rodriguez, City Manager hrodriguez@cityofcudahy.ca.us
Culver City (4B190165001)	Mailing Address	9770 Culver Boulevard Culver City, CA 90232-0507
	Facility Contact, Title, and Phone	Damian Skinner, Manager (310) 253-6421
Diamond Bar (4B190166001)	Mailing Address	21825 East Copley Drive Diamond Bar, CA 91765-4177
	Facility Contact, Title, and E-mail	David Liu, Director of Public Works dliu@diamondbarca.gov
Downey (4B190167001)	Mailing Address	P.O. Box 7016 Downey, CA 90241-7016
	Facility Contact, Title, and E-mail	Yvonne Blumberg yblumberg@downeyca.org
Duarte (4B190168001)	Mailing Address	1600 Huntington Drive Duarte, CA 91010-2592
	Facility Contact, Title, and Phone	Steve Esbenshades, Engineering Division Manager (626) 357-7931 ext. 233
El Monte (4B190169001)	Mailing Address	P.O. Box 6008 El Monte, CA 91731
	Facility Contact, Title, and Phone	James A Enriquez, Director of Public Works (626) 580-2058
El Segundo (4B190170001)	Mailing Address	350 Main Street El Segundo, CA 90245-3895
	Facility Contact, Title, Phone, and E-mail	Stephanie Katsouleas, Public Works Director (310) 524-2356 skatsouleas@elsegundo.org
Gardena (4B190118002)	Mailing Address	P.O. Box 47003 Gardena, CA 90247-3778

Permittee (WDID)	Contact Information	
	Facility Contact, Title, and E-mail	Ron Jackson, Building Maintenance Supervisor jfelix@ci.gardena.ci.us
Glendale (4B190171001)	Mailing Address	Engineering Section, 633 East Broadway, Room 209 Glendale, CA 91206-4308
	Facility Contact, Title, and E-mail	Maurice Oillataguerre, Senior Environmental Program Scientist moillataguerre@ci.glendale.ca.us
Glendora (4B190172001)	Mailing Address	116 East Foothill Boulevard Glendora, CA 91741
	Facility Contact, Title, and E-mail	Dave Davies, Deputy Director of Public Works ddavies@ci.glendora.ca.us
Hawaiian Gardens (4B190173001)	Mailing Address	21815 Pioneer Boulevard Hawaiian Gardens, CA 90716
	Facility Contact, Title, and E-mail	Joseph Colombo, Director of Community Development jcolombo@ghcity.org
Hawthorne (4B190174001)	Mailing Address	4455 West 126 <sup>th</sup> Street Hawthorne, CA 90250-4482
	Facility Contact, Title, and E-mail	Arnold Shadbeh, Chief General Service and Public Works ashadbeh@cityofhawthorne.org
Hermosa Beach (4B190175001)	Mailing Address	1315 Valley Drive Hermosa Beach, CA 90254-3884
	Facility Contact, Title, and E-mail	Homayoun Behboodi, Associate Engineer hbehboodi@hermosabch.org
Hidden Hills (4B190176001)	Mailing Address	6165 Spring Valley Road Hidden Hills, CA 91302
	Facility Contact, Title, and Phone	Kimberly Colberts, Environmental Coordinator (310) 257-2004
Huntington Park (4B190177001)	Mailing Address	6550 Miles Avenue Huntington Park, CA 90255
	Facility Contact, Title, and Phone	Craig Melich, City Engineer and City Official (323) 584-6253
Industry (4B190178001)	Mailing Address	P.O. Box 3366 Industry, CA 91744-3995
	Facility Contact and Title	Mike Nagaoka, Director of Public Safety
Inglewood (4B190179001)	Mailing Address	1 W. Manchester Blvd, 3 <sup>rd</sup> Floor Inglewood, CA 90301-1750
	Facility Contact, Title, and E-mail	Lauren Amimoto, Senior Administrative Analyst lamimoto@cityofinglewood.org
Irwindale (4B190180001)	Mailing Address	5050 North Irwindale Avenue Irwindale, CA 91706
	Facility Contact, Title, and E-mail	Kwok Tam, Director of Public Works ktam@ci.irwindale.ca.us
La Canada Flintridge (4B190181001)	Mailing Address	1327 Foothill Boulevard La Canada Flintridge, CA 91011-2137
	Facility Contact, Title, and E-mail	Edward G. Hitti, Director of Public Works ehitti@lcf.ca.gov
La Habra Heights (4B190182001)	Mailing Address	1245 North Hacienda Boulevard La Habra Heights, CA 90631-2570
	Facility Contact, Title, and E-mail	Shauna Clark, City Manager shaunac@lhcacity.org
La Mirada	Mailing Address	13700 La Mirada Boulevard

Permittee (WDID)	Contact Information	
(4B190183001)		La Mirada, CA 90638-0828
	Facility Contact, Title, and E-mail	Steve Forster, Public Works Director sforster@cityoflamirada.org
La Puente (4B190184001)	Mailing Address	15900 East Marin Street La Puente, CA 91744-4788
	Facility Contact, Title, and E-mail	John DiMario, Director of Development Services jdimario@lapuente.org
La Verne (4B190185001)	Mailing Address	3660 "D" Street La Verne, CA 91750-3599
	Facility Contact, Title, and E-mail	Daniel Keeseey, Director of Public Works dkeeseey@ci.la-verne.ca.us
Lakewood (4B190186001)	Mailing Address	P.O. Box 158 Lakewood, CA 90714-0158
	Facility Contact and E-mail	Konya Vivanti kvivanti@lakewoodcity.org
Lawndale (4B190127002)	Mailing Address	14717 Burin Avenue Lawndale, CA 90260
	Facility Contact and Title	Marlene Miyoshi, Senior Administrative Analyst
Lomita (4B190187001)	Mailing Address	P.O. Box 339 Lomita, CA 90717-0098
	Facility Contact, Title, and E-mail	Tom A. Odom, City Administrator d.tomita@lomitacity.com
Los Angeles (4B190188001)	Mailing Address	1149 S. Broadway, 10 <sup>th</sup> Floor Los Angeles, CA 90015
	Facility Contact, Title, and Phone	Shahram Kharaghani, Program Manager (213) 485-0587
Lynwood (4B190189001)	Mailing Address	11330 Bullis Road Lynwood, CA 90262-3693
	Facility Contact and Phone	Josef Kekula (310) 603-0220 ext. 287
Malibu (4B190190001)	Mailing Address	23825 Stuart Ranch Road Malibu, CA 90265-4861
	Facility Contact, Title, and E-mail	Jennifer Brown, Environmental Program Analyst jbrown@malibucity.org
Manhattan Beach (4B190191001)	Mailing Address	1400 Highland Avenue Manhattan Beach, CA 90266-4795
	Facility Contact, Title, and Email	Brian Wright, Water Supervisor bwright@citymb.info
Maywood (4B190192001)	Mailing Address	4319 East Slauson Avenue Maywood, CA 90270-2897
	Facility Contact, Title, and Phone	Andre Dupret, Project Manager (323) 562-5721
Monrovia (4B190193001)	Mailing Address	415 South Ivy Avenue Monrovia, CA 91016-2888
	Facility Contact and E-mail	Heather Maloney hmaloney@ci.monrovia.ca.gov
Montebello (4B190194001)	Mailing Address	1600 West Beverly Boulevard Montebello, CA 90640-3970
	Facility Contact and E-mail	Cory Roberts croberts@aaeinc.com
Monterey Park	Mailing Address	320 West Newmark Avenue

Permittee (WDID)	Contact Information	
(4B190195001)		Monterey Park, CA 91754-2896
	Facility Contact, Phone, and E-mail	Amy Ho (626) 307-1383 amho@montereypark.ca.gov John Hunter (Consultant) at jhunter@jhla.net
Norwalk (4B190196001)	Mailing Address	P.O. Box 1030 Norwalk, CA 90651-1030
	Facility Contact and Title	Chino Consunji, City Engineer
Palos Verdes Estates (4B190197001)	Mailing Address	340 Palos Verdes Drive West Palos Verdes Estates, CA 90274
	Facility Contact, Title, and E-mail	Allan Rigg, Director of Public Works arigg@pvestates.org
Paramount (4B190198001)	Mailing Address	16400 Colorado Avenue Paramount, CA 90723-5091
	Facility Contact, Title, and E-mail	Chris Cash, Utility and Infrastructure Assistant Director ccash@paramountcity.org
Pasadena (4B190199001)	Mailing Address	P.O. Box 7115 Pasadena, CA 91109-7215
	Facility Contact and E-mail	Stephen Walker swalker@cityofpasadena.net
Pico Rivera (4B190200001)	Mailing Address	P.O. Box 1016 Pico Rivera, CA 90660-1016
	Facility Contact, Title, and E-mail	Art Cervantes, Director of Public Works acervantes@pico-rivera.org
Pomona (4B190145003)	Mailing Address	P.O. Box 660 Pomona, CA 91769-0660
	Facility Contact, Title, and E-mail	Julie Carver, Environmental Programs Coordinator Julie_Carver@ci.pomona.ca.us
Rancho Palos Verdes (4B190201001)	Mailing Address	30940 Hawthorne Boulevard Rancho Palos Verdes, CA 90275
	Facility Contact, Title, and E-mail	Ray Holland, Interim Public Works Director clehr@rpv.com
Redondo Beach (4B190143002)	Mailing Address	P.O. Box 270 Redondo Beach, CA 90277-0270
	Facility Contact, Title, and E-mail	Mike Shay, Principal Civil Engineer mshay@redondo.org
Rolling Hills (4B190202001)	Mailing Address	2 Portuguese Bend Road Rolling Hills, CA 90274-5199
	Facility Contact, Title, and E-mail	Greg Grammer, Assistant to the City Manager ggrammer@rollinghillsestatesca.gov
Rolling Hills Estates (4B190203001)	Mailing Address	4045 Palos Verdes Drive North Rolling Hills Estates, CA 90274
	Facility Contact, Title, and E-mail	Greg Grammer, Assistant to the City Manager ggrammer@rollinghillsestatesca.gov
Rosemead (4B190204001)	Mailing Address	8838 East Valley Boulevard Rosemead, CA 91770-1787
	Facility Contact, Title, and Phone	Chris Marcarello, Director of PW (626) 569-2118
San Dimas (4B190205001)	Mailing Address	245 East Bonita Avenue San Dimas, CA 91773-3002
	Facility Contact, Title,	Latoya Cyrus, Environmental Services Coordinator

Permittee (WDID)	Contact Information	
	and E-mail	lcyrus@ci.san-dimas.ca.us
San Fernando (4B190206001)	Mailing Address	117 Macneil Street San Fernando, CA 91340
	Facility Contact, Title, and E-mail	Ron Ruiz, Director of Public Works rruiz@sfcity.org
San Gabriel (4B190207001)	Mailing Address	425 South Mission Drive San Gabriel, CA 91775
	Facility Contact, Title, and Phone	Daren T. Grilley, City Engineer (626) 308-2806 ext. 4631
San Marino (4B190208001)	Mailing Address	2200 Huntington Drive San Marino, CA 91108-2691
	Facility Contact, Title, and E-mail	Chuck Richie, Director of Parks and Public Works criche@cityofsanmarino.org
Santa Clarita (4B190117001)	Mailing Address	23920 West Valencia Boulevard, Suite 300 Santa Clarita, CA 91355
	Facility Contact, Title, and Phone	Travis Lange, Environmental Services Manager (661) 255-4337
Santa Fe Springs (4B190108003)	Mailing Address	P.O. Box 2120 Santa Fe Springs, CA 90670-2120
	Facility Contact, Title, and E-mail	Sarina Morales-Choate, Civil Engineer Assistant smorales-choate@santafesprings.org
Santa Monica (4B190122002)	Mailing Address	1685 Main Street Santa Monica, CA 90401-3295
	Facility Contact, Title, and E-mail	Neal Shapiro, Urban Runoff Coordinator nshapiro@smgov.net
Sierra Madre (4B190209001)	Mailing Address	232 West Sierra Madre Boulevard Sierra Madre, CA 91024-2312
	Facility Contact, Title, and Phone	James Carlson, Management Analyst (626) 355-7135 ext. 803
Signal Hill (4B190210001)	Mailing Address	2175 Cherry Avenue Signal Hill, CA 90755
	Facility Contact, Phone, and E-mail	John Hunter (562) 802-7880 jhunter@jlha.net
South El Monte (4B190211001)	Mailing Address	1415 North Santa Anita Avenue South El Monte, CA 91733-3389
	Facility Contact and Phone	Anthony Ybarra, City Manager (626) 579-6540
South Gate (4B190212001)	Mailing Address	8650 California Avenue South Gate, CA 90280
	Facility Contact, Phone, and E-mail	John Hunter (562) 802-7880 jhunter@jlha.net
South Pasadena (4B190213001)	Mailing Address	1414 Mission Street South Pasadena, CA 91030-3298
	Facility Contact, Phone, and E-mail	John Hunter (562) 802-7880 jhunter@jlha.net
Temple City (4B190214001)	Mailing Address	9701 Las Tunas Drive Temple City, CA 91780-2249
	Facility Contact,	Joe Lambert at (626) 285-2171 or

Permittee (WDID)	Contact Information	
	Phone, and E-mail	
Torrance (4B190215001)	Phone, and E-mail	John Hunter at (562) 802-7880/jhunter@jlha.net
	Mailing Address	3031 Torrance Boulevard Torrance, CA 90503-5059
	Facility Contact and Title	Leslie Cortez, Senior Administrative Assistant
Vernon (4B190216001)	Mailing Address	4305 Santa Fe Avenue Vernon, CA 90058-1786
	Facility Contact and Phone	Claudia Arellano (323) 583-8811
Walnut (4B190217001)	Mailing Address	P.O. Box 682 Walnut, CA 91788
	Facility Contact and Title	Jack Yoshino, Senior Management Assistant
West Covina (4B190218001)	Mailing Address	P.O. Box 1440 West Covina, CA 91793-1440
	Facility Contact, Title, and E-mail	Samuel Gutierrez, Engineering Technician sam.gutierrez@westcovina.org
West Hollywood (4B190219001)	Mailing Address	8300 Santa Monica Boulevard West Hollywood, CA 90069-4314
	Facility Contact, Title, and E-mail	Sharon Perlstein, City Engineer sperlstein@weho.org
Westlake Village (4B190220001)	Mailing Address	31200 Oak Crest Drive Westlake Village, CA 91361
	Facility Contact, Title, Phone, and E-mail	Joe Bellomo, Stormwater Program Manager (805) 279-6856 jbellomo@willdan.com
Whittier (4B190221001)	Mailing Address	13230 Penn Street Whittier, CA 90602-1772
	Facility Contact, Title, and E-mail	David Mochizuki, Director of Public Works dmochizuki@cityofwhittier.org
County of Los Angeles (4B190107099)	Mailing Address	900 South Fremont Avenue Alhambra, CA 91803
	Facility Contact, Title, Phone, and E-mail	Gary Hildebrand, Assistant Deputy Director, Division Engineer (626) 458-4300 ghildeb@dpw.lacounty.gov
Los Angeles County Flood Control District (4B190107101)	Mailing Address	900 South Fremont Avenue Alhambra, CA 91803
	Facility Contact, Title, Phone, and E-mail	Gary Hildebrand, Assistant Deputy Director, Division Engineer (626) 458-4300 ghildeb@dpw.lacounty.gov



**Table 3. Discharge Location**

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
All Municipal Separate Storm Sewer System discharge points within Los Angeles County with the exception of the City of Long Beach	Storm Water and Non-Storm Water	Numerous	Numerous	Surface waters identified in Tables 2-1, 2-1a, 2-3, and 2-4, and Appendix 1, Table 1 of the <i>Water Quality Control Plan - Los Angeles Region (Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties)</i> , and other unidentified tributaries to these surface waters within the following Watershed Management Areas: (1) Santa Clara River Watershed; (2) Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed; (3) Los Angeles River Watershed; (4) Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area; (5) Los Cerritos Channel and Alamitos Bay Watershed Management Area; (6) San Gabriel River Watershed; and (7) Santa Ana River Watershed. <sup>1</sup>

**Table 4. Administrative Information**

This Order was adopted by the California Regional Water Quality Control Board, Los Angeles Region on:	<b>November 8, 2012</b>
This Order becomes effective on:	<b>December 28, 2012</b>
This Order expires on:	<b>December 28, 2017</b>
In accordance with Title 23, Division 3, Chapter 9 of the California Code of Regulations and Title 40, Part 122 of the Code of Federal Regulations, each Discharger shall file a Report of Waste Discharge as application for issuance of new waste discharge requirements no later than:	<b>180 days prior to the Order expiration date above</b>

<sup>1</sup> Note that the Santa Ana River Watershed lies primarily within the boundaries of the Santa Ana Regional Water Quality Control Board. However, a portion of the Chino Basin subwatershed lies within the jurisdictions of Pomona and Claremont in Los Angeles County. The primary receiving waters within the Los Angeles County portion of the Chino Basin subwatershed are San Antonio Creek and Chino Creek.

In accordance with section 2235.4 of Title 23 of the California Code of Regulations, the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with. Accordingly, if a new order is not adopted by the expiration date above, then the Permittees shall continue to implement the requirements of this Order until a new one is adopted.

I, Samuel Unger, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 8, 2012.

*Samuel Unger*

Samuel Unger, Executive Officer

### Table of Contents

I.	Facility Information .....	1
II.	Findings .....	13
III.	Discharge Prohibitions.....	27
	A. Prohibitions – Non-Storm Water Discharges .....	27
IV.	Effluent Limitations and Discharge Specifications .....	38
	A. Effluent Limitations.....	38
	B. Land Discharge Specifications – Not Applicable.....	38
	C. Reclamation Specifications – Not Applicable.....	38
V.	Receiving Water Limitations .....	38
	A. Receiving Water Limitations .....	38
	B. Ground Water Limitations – Not Applicable .....	39
VI.	Provisions.....	39
	A. Standard Provisions.....	39
	B. Monitoring and Reporting Program (MRP) Requirements .....	46
	C. Watershed Management Programs .....	47
	D. Storm Water Management Program Minimum Control Measures .....	67
	E. Total Maximum Daily Load Provisions .....	141

### List of Tables

Table 1.	Discharger Information.....	1
Table 2.	Facility Information .....	1
Table 3.	Discharge Location .....	9
Table 4.	Administrative Information.....	9
Table 5.	List of Permittees .....	16
Table 6.	Basin Plan Beneficial Uses .....	21
Table 7.	Ocean Plan Beneficial Uses.....	24
Table 8.	Required Conditions for Conditionally Exempt Non-Storm Water Discharges ...	34
Table 9.	Watershed Management Program Implementation Requirements.....	54
Table 10.	Source Control BMPs at Commercial and Industrial Facilities .....	93
Table 11.	Benchmarks Applicable to New Development Treatment BMPs.....	104
Table 12.	Minimum Set of BMPs for All Construction Sites.....	114
Table 13.	Minimum Set of BMPs for All Construction Sites.....	118
Table 14.	Additional BMPs Applicable to Construction Sites Disturbing 1 Acre or More.	118
Table 15.	Additional Enhanced BMPs for High Risk Sites .....	118
Table 16.	Minimum Required BMPs for Roadway Paving or Repair Operation .....	119
Table 17.	Inspection Frequencies .....	120
Table 18.	BMPs for Public Agency Facilities and Activities.....	127
Table 19.	Discharge Limitations for Dewatering Treatment BMPs.....	134

### List of Attachments

Attachment A – Definitions .....	A-1
Attachment B – Watershed Management Area Maps.....	B-1
Attachment C – MS4 Maps by Watershed Management Area .....	C-1
Attachment D – Standard Provisions.....	D-1
Attachment E – Monitoring and Reporting Program .....	E-1
Attachment F – Fact Sheet.....	F-1
Attachment G – Non-Storm Water Action Levels.....	G-1
Attachment H – Bioretention/Biofiltration Design Criteria.....	H-1
Attachment I – Developer Technical Information and Guidelines .....	I-1
Attachment J – Determination of Erosion Potential .....	J-1
Attachment K – Permittees and TMDLs Matrix.....	K-1
Attachment L – TMDL Provisions for Santa Clara River Watershed Management Area .....	L-1
Attachment M – TMDL Provisions for Santa Monica Bay Watershed Management Area (including Malibu Creek, Ballona Creek, and Marina del Rey Subwatersheds).....	M-1
Attachment N – TMDL Provisions for Dominguez Channel and Greater Harbor Waters Watershed Management Area (including Machado Lake Subwatershed) ...	N-1
Attachment O – TMDL Provisions for Los Angeles River Watershed Management Area.....	O-1
Attachment P – TMDL Provisions for San Gabriel River Watershed Management Area.....	P-1
Attachment Q – TMDL Provisions for Los Cerritos Channel and Alamitos Bay Watershed Management Area .....	Q-1
Attachment R – TMDL Provisions for Middle Santa Ana River Watershed Management Area .....	R-1

## II. FINDINGS

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Water Board) finds:

### A. Nature of Discharges and Sources of Pollutants

Storm water and non-storm water discharges consist of surface runoff generated from various land uses, which are conveyed via the municipal separate storm sewer system and ultimately discharged into surface waters throughout the region. Discharges of storm water and non-storm water from the Municipal Separate Storm Sewer Systems (MS4s) within the Coastal Watersheds of Los Angeles County convey pollutants to surface waters throughout the Los Angeles Region. In general, the primary pollutants of concern in these discharges identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2005) are indicator bacteria, total aluminum, copper, lead, zinc, diazinon, and cyanide. Aquatic toxicity, particularly during wet weather, is also a concern based on a review of Annual Monitoring Reports from 2005-10. Storm water and non-storm water discharges of debris and trash are also a pervasive water quality problem in the Los Angeles Region though significant strides have been made by a number of Permittees in addressing this problem through the implementation of control measures to achieve wasteload allocations established in trash TMDLs.

Pollutants in storm water and non-storm water have damaging effects on both human health and aquatic ecosystems. Water quality assessments conducted by the Regional Water Board have identified impairment of beneficial uses of water bodies in the Los Angeles Region caused or contributed to by pollutant loading from municipal storm water and non-storm water discharges. As a result of these impairments, there are beach postings and closures, fish consumption advisories, local and global ecosystem and aesthetic impacts from trash and debris, reduced habitat for threatened and endangered species, among others. The Regional Water Board and USEPA have established 33 total maximum daily loads (TMDLs) that identify Los Angeles County MS4 discharges as one of the pollutant sources causing or contributing to these water quality impairments.

### B. Permit History

Prior to the issuance of this Order, Regional Water Board Order No. 01-182 served as the NPDES Permit for MS4 storm water and non-storm water discharges within the Coastal Watersheds of the County of Los Angeles. The requirements of Order No. 01-182 applied to the Los Angeles County Flood Control District, the unincorporated areas of Los Angeles County under County jurisdiction, and 84 Cities within the Los Angeles County Flood Control District with the exception of the City of Long Beach. The first county-wide MS4 permit for the County of Los Angeles and the incorporated areas therein was Order No. 90-079, adopted by the Regional Water Board on June 18, 1990.

Under Order No. 01-182, the Los Angeles County Flood Control District was designated the Principal Permittee, and the County of Los Angeles and 84 incorporated Cities were each designated Permittees. The Principal Permittee coordinated and facilitated activities necessary to comply with the requirements of Order No. 01-182, but was not responsible for ensuring compliance of any of the other Permittees. The designation of a Principal Permittee has not been carried over from Order No. 01-182.

Order No. 01-182 was subsequently amended by the Regional Water Board on September 14, 2006 by Order No. R4-2006-0074 to incorporate provisions consistent with the assumptions and requirements of the Santa Monica Bay Beaches Dry Weather Bacteria TMDL (SMB Dry Weather Bacteria TMDL) waste load allocations (WLAs). As a result of a legal challenge to Order No. R4-2006-0074, the Los Angeles County Superior Court issued a peremptory writ of mandate on July 23, 2010 requiring the Regional Water Board to void and set aside the amendments adopted through Order No. R4-2006-0074 in Order No. 01-182. The Court concluded that the permit proceeding at which Order No. R4-2006-0074 was adopted was procedurally deficient. The Court did not address the substantive merits of the amendments themselves, and thus made no determination about the substantive validity of Order No. R4-2006-0074. In compliance with the writ of mandate, the Regional Water Board voided and set aside the amendments adopted through Order No. R4-2006-0074 on April 14, 2011. This Order reincorporates requirements equivalent to the 2006 provisions to implement the SMB Dry Weather Bacteria TMDL.

In addition, Order No. 01-182 was amended on August 9, 2007 by Order No. R4-2007-0042 to incorporate provisions consistent with the assumptions and requirements of the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL, and was again amended on December 10, 2009 by Order No. R4-2009-0130 to incorporate provisions consistent with the assumptions and requirements of the Los Angeles River Watershed Trash TMDL.

### **C. Permit Application**

On June 12, 2006, prior to the expiration date of Order No. 01-182, all of the Permittees filed Reports of Waste Discharge (ROWD) applying for renewal of their waste discharge requirements that serve as an NPDES permit to discharge storm water and authorized and conditionally exempt non-storm water through their MS4 to surface waters. Specifically, the Los Angeles County Flood Control District (LACFCD) submitted an ROWD application on behalf of itself, the County of Los Angeles, and 78 other Permittees. Several Permittees under Order No. 01-182 elected to not be included as part of the Los Angeles County Flood Control District's ROWD. On June 12, 2006, the Cities of Downey and Signal Hill each submitted an individual ROWD application requesting a separate MS4 Permit; and the Upper San Gabriel River Watershed Coalition, comprised of the cities of Azusa, Claremont, Glendora, Irwindale, and Whittier also submitted an individual ROWD application requesting a separate MS4 Permit for these cities. In 2010, the LACFCD withdrew from its participation in the 2006 ROWD submitted in conjunction with the County and 78 other co-permittees, and submitted a new ROWD also requesting an individual MS4 permit. The LACFCD also requested that, if an individual MS4 permit was not issued to it, it no longer be designated as the

Principal Permittee and it be relieved of Principal Permittee responsibilities. The Regional Water Board evaluated each of the 2006 ROWDs and notified all of the Permittees that their ROWDs did not satisfy federal storm water regulations contained in the USEPA Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule, August 9, 1996 (61 *Fed Reg.* 41697). Because each ROWD did not satisfy federal requirements, the Regional Water Board deemed all four 2006 ROWDs incomplete. The Regional Water Board also evaluated the LACFCD's 2010 ROWD and found that it too did not satisfy federal requirements for MS4s.

Though five separate ROWDs were submitted, the Regional Water Board retains discretion as the permitting authority to determine whether to issue permits for discharges from MS4s on a system-wide or jurisdiction-wide basis (Clean Water Act (CWA) § 402(p)(3)(B)(i); 40 CFR section 122.26, subdivisions (a)(1)(v) and (a)(3)(ii)). Because of the complexity and networking of the MS4 within Los Angeles County, which often results in commingled discharges, the Regional Water Board has previously adopted a system-wide approach to permitting MS4 discharges within Los Angeles County.

In evaluating the five separate ROWDs, the Regional Water Board considered the appropriateness of permitting discharges from MS4s within Los Angeles County on a system-wide or jurisdiction-wide basis or a combination of both. Based on that evaluation, the Regional Water Board again determined that, because of the complexity and networking of the MS4 within Los Angeles County, that one system-wide permit is appropriate. In order to provide individual Permittees with more specific requirements, certain provisions of this Order are organized by watershed management area, which is appropriate given the requirements to implement 33 watershed-based TMDLs. The Regional Water Board also determined that because the LACFCD owns and operates large portions of the MS4 infrastructure, including but not limited to catch basins, storm drains, outfalls and open channels, in each coastal watershed management area within Los Angeles County, the LACFCD should remain a Permittee in the single system-wide permit; however, this Order relieves the LACFCD of its role as "Principal Permittee."

#### **D. Permit Coverage and Facility Description**

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District with the exception of the City of Long Beach (see Table 5, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Dischargers, discharge storm water and non-storm water from municipal separate storm sewer systems (MS4s), also called storm drain systems. For the purposes of this Order, references to the "Discharger" or "Permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger, or Permittees herein.

The area covered under this Order encompasses more than 3,000 square miles. This area contains a vast drainage network that serves incorporated and unincorporated areas in every Watershed Management Area within the Los Angeles Region. Maps

depicting the major drainage infrastructure within the area covered under this Order are included in Attachment C of this Order.

**Table 5. List of Permittees**

Agoura Hills	Hawaiian Gardens	Pomona
Alhambra	Hawthorne	Rancho Palos Verdes
Arcadia	Hermosa Beach	Redondo Beach
Artesia	Hidden Hills	Rolling Hills
Azusa	Huntington Park	Rolling Hills Estates
Baldwin Park	Industry	Rosemead
Bell	Inglewood	San Dimas
Bell Gardens	Irwindale	San Fernando
Bellflower	La Canada Flintridge	San Gabriel
Beverly Hills	La Habra Heights	San Marino
Bradbury	La Mirada	Santa Clarita
Burbank	La Puente	Santa Fe Springs
Calabasas	La Verne	Santa Monica
Carson	Lakewood	Sierra Madre
Cerritos	Lawndale	Signal Hill
Claremont	Lomita	South El Monte
Commerce	Los Angeles	South Gate
Compton	Lynwood	South Pasadena
Covina	Malibu	Temple City
Cudahy	Manhattan Beach	Torrance
Culver City	Maywood	Vernon
Diamond Bar	Monrovia	Walnut
Downey	Montebello	West Covina
Duarte	Monterey Park	West Hollywood
El Monte	Norwalk	Westlake Village
El Segundo	Palos Verdes Estates	Whittier
Gardena	Paramount	County of Los Angeles
Glendale	Pasadena	Los Angeles County Flood Control District
Glendora	Pico Rivera	

**E. Los Angeles County Flood Control District**

In 1915, the California Legislature enacted the Los Angeles County Flood Control Act, establishing the Los Angeles County Flood Control District (LACFCD). The objects and purposes of the Act are to provide for the control and conservation of the flood, storm and other waste waters within the flood control district. Among its other powers, the LACFCD also has the power to preserve, enhance, and add recreational features to lands or interests in lands contiguous to its properties for the protection, preservation, and use of the scenic beauty and natural environment for the properties or the lands. The LACFCD is governed, as a separate entity, by the County of Los Angeles Board of Supervisors.



The LACFCD's system includes the majority of drainage infrastructure within incorporated and unincorporated areas in every watershed, including approximately 500 miles of open channel, 3,500 miles of underground drains, and an estimated 88,000 catch basins, and several dams. Portions of the LACFCD's current system were originally unmodified natural rivers and water courses.

The LACFCD's system conveys both storm and non-storm water throughout the Los Angeles basin. Other Permittees' MS4s connect and discharge to the LACFCD's system.

The waters and pollutants discharged from the LACFCD's system come from various sources. These sources can include storm water and non-storm water from the Permittees under this permit and other NPDES and non-NPDES Permittees discharging into the LACFCD's system, including industrial waste water dischargers, waste water treatment facilities, industrial and construction stormwater Permittees, water suppliers, government entities, CERCLA potentially responsible parties, and Caltrans. Sources can also include discharges from school districts that do not operate large or medium-sized municipal storm sewers and discharges from entities that have waste discharge requirements or waivers of waste discharge requirements.

Unlike other Permittees, including the County of Los Angeles, the LACFCD does not own or operate any municipal sanitary sewer systems, public streets, roads, or highways.

The LACFCD in contrast to the County of Los Angeles has no planning, zoning, development permitting or other land use authority over industrial or commercial facilities, new developments or re-development projects, or development construction sites located in any incorporated or unincorporated areas within its service area. The Permittees that have such land use authority are responsible for implementing a storm water management program to inspect and control pollutants from industrial and commercial facilities, new development and re-development projects, and development construction sites within their jurisdictional boundaries. Nonetheless, as an owner and operator of MS4s, the LACFCD is required by federal regulations to control pollutant discharges into and from its MS4, including the ability to control through interagency agreements among co-Permittees and other owners of a MS4 the contribution of pollutants from one portion of the MS4 to another portion of the MS4.

## **F. Permit Scope**

This Order regulates municipal discharges of storm water and non-storm water from the Permittees' MS4s. Section 122.26(b)(8) of title 40 of the Code of Federal Regulations (CFR) defines an MS4 as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) [o]wned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian

tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) [d]esignated or used for collecting or conveying storm water; (iii) [w]hich is not a combined sewer; and (iv) [w]hich is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.”

Storm water discharges consist of those discharges that originate from precipitation events. Federal regulations define “storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 CFR § 122.26(b)(13).) While “surface runoff and drainage” is not defined in federal law, USEPA’s preamble to its final storm water regulations demonstrates that the term is related to precipitation events such as rain and/or snowmelt. (55 *Fed. Reg.* 47990, 47995-96 (Nov. 16, 1990)).

Non-storm water discharges consist of all discharges through an MS4 that do not originate from precipitation events. Non-storm water discharges through an MS4 are prohibited unless authorized under a separate NPDES permit; authorized by USEPA pursuant to Sections 104(a) or 104(b) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); composed of natural flows; the result of emergency fire fighting activities; or conditionally exempted in this Order.

A permit issued to more than one Permittee for MS4 discharges may contain separate storm water management programs for particular Permittees or groups of Permittees. 40 CFR § 122.26(d)(2)(iv). Given the LACFCD’s limited land use authority, it is appropriate for the LACFCD to have a separate and uniquely-tailored storm water management program. Accordingly, the storm water management program minimum control measures imposed on the LACFCD in Part VI.D of this Order differ in some ways from the minimum control measures imposed on other Permittees. Namely, aside from its own properties and facilities, the LACFCD is not subject to the Industrial/Commercial Facilities Program, the Planning and Land Development Program, and the Development Construction Program. However, as a discharger of storm and non-storm water, the LACFCD remains subject to the Public Information and Participation Program and the Illicit Connections and Illicit Discharges Elimination Program. Further, as the owner and operator of certain properties, facilities and infrastructure, the LACFCD remains subject to requirements of a Public Agency Activities Program.

#### **G. Geographic Coverage and Watershed Management Areas**

The municipal storm water and non-storm water discharges flow into receiving waters in the Watershed Management Areas of the Santa Clara River Watershed; Santa Monica Bay Watershed Management Area, including Malibu Creek Watershed and Ballona Creek Watershed; Los Angeles River Watershed; Dominguez Channel and Greater Los Angeles/Long Beach Harbors Watershed Management Area; Los Cerritos Channel and Alamitos Bay Watershed Management Area; San Gabriel River Watershed; and Santa Ana River Watershed.

This Order redefines Watershed Management Areas (WMAs) consistent with the delineations used in the Regional Water Board's Watershed Management Initiative. Permittees included in each of the WMAs are listed in Attachment K.

Maps depicting each WMA, its subwatersheds, and the major receiving waters therein are included in Attachment B.

Federal, state, regional or local entities in jurisdictions outside the Los Angeles County Flood Control District, and not currently named as Permittee to this Order, may operate MS4 facilities and/or discharge to the MS4 and water bodies covered by this Order. Pursuant to 40 CFR sections 122.26(d)(1)(ii) and 122.26(d)(2)(iv), each Permittee shall maintain the necessary legal authority to control the contribution of pollutants to its MS4 and shall include in its storm water management program a comprehensive planning process that includes intergovernmental coordination, where necessary.

Sources of MS4 discharges into receiving waters in the County of Los Angeles but not covered by this Order include the following:

- About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,
- About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and
- About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

Specifically, the Orange County Flood Control District (OCFCD) owns and operates the Los Alamitos Retarding Basin and Pumping Station (Los Alamitos Retarding Basin). The Los Alamitos Retarding Basin is within the San Gabriel River Watershed, and is located adjacent to the Los Angeles and Orange County boundary. The majority of the 30-acre Los Alamitos Retarding Basin is in Orange County; however, the northwest corner of the facility is located in the County of Los Angeles. Storm water and non-storm water discharges, which drain to the Los Alamitos Retarding Basin, are pumped to the San Gabriel River Estuary (SGR Estuary) through pumps and subterranean piping. The pumps and discharge point are located in the County of Los Angeles.

The OCFCD pumps the water within the Los Alamitos Retarding Basin to the San Gabriel River Estuary through four discharge pipes, which are covered by tide gates. The discharge point is located approximately 700 feet downstream from the 2nd Street Bridge in Long Beach. The total pumping capacity of the four pumps is 800 cubic feet per second (cfs). There is also a 5 cfs sump pump that discharges nuisance flow continuously to the Estuary through a smaller diameter uncovered pipe.

The discharge from the Los Alamitos Retarding Basin is covered under the Orange County Municipal NPDES Storm Water Permit (NPDES Permit No. CAS618030, Santa Ana Regional Water Quality Control Board Order No. R8-2010-0062), which was issued to the County of Orange, Orange County Flood Control District and Incorporated Cities on May 22, 2009. The Orange County MS4 Permit references the San Gabriel River Metals and Selenium TMDL (Metals TMDL). The waste load allocations listed in the

Metals TMDL for Coyote Creek are included in the Orange County MS4 Permit. However, the Orange County MS4 Permit does not contain the dry weather copper waste load allocations assigned to the Estuary.

## H. Legal Authorities

This Order is issued pursuant to CWA section 402 and implementing regulations adopted by the USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). This Order serves as an NPDES permit for point source discharges from the Permittees' MS4s to surface waters. This Order also serves as waste discharge requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the California Water Code (commencing with Section 13260).

- I. **Municipal Separate Storm Sewer System Requirements.** The 1972 Clean Water Act<sup>2</sup> established the NPDES Program to regulate the discharge of pollutants from point sources to waters of the United States. However, pollution from storm water and dry-weather urban runoff was largely unabated for over a decade. In response to the 1987 Amendments to the Clean Water Act, USEPA developed Phase I of the NPDES Storm Water Permitting Program in 1990, which established a framework for regulating municipal and industrial discharges of storm water and non-storm water. The Phase I program addressed sources of storm water and dry-weather urban runoff that had the greatest potential to negatively impact water quality. In particular, under Phase I, USEPA required NPDES Permit coverage for discharges from medium and large MS4 with populations of 100,000 or more. Operators of MS4s regulated under the Phase I NPDES Storm Water Program were required to obtain permit coverage for municipal discharges of storm water and non-storm water to waters of the United States

Early in the history of this MS4 Permit, the Regional Water Board designated the MS4s owned and/or operated by the incorporated cities and Los Angeles County unincorporated areas within the Coastal Watersheds of Los Angeles County as a large MS4 due to the total population of Los Angeles County, including that of unincorporated and incorporated areas, and the interrelationship between the Permittees' MS4s, pursuant to 40 CFR section 122.26(b)(4). The total population of the cities and County unincorporated areas covered by this Order was 9,519,338 in 2000 and has increased by approximately 300,000 to 9,818,605 in 2010, according to the United States Census.

This Order implements the federal Phase I NPDES Storm Water Program requirements. These requirements include three fundamental elements: (i) a requirement to effectively prohibit non-storm water discharges through the MS4, (ii) requirements to implement controls to reduce the discharge of pollutants to the maximum extent practicable, and (iii) other provisions the Regional Water Board has determined appropriate for the control of such pollutants.

- J. **Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the Permittees' applications, through monitoring and reporting programs, and other available

---

<sup>2</sup> Federal Water Pollution Control Act; 33 U.S.C. § 1251 et seq., which, as amended in 1977, is commonly known as the Clean Water Act.

information. In accordance with federal regulations at 40 CFR section 124.8, a Fact Sheet (Attachment F) has been prepared to explain the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing this Order. The Fact Sheet is hereby incorporated into this Order and also constitutes part of the Findings of the Regional Water Board for this Order. Attachments A through E and G through R are also incorporated into this Order.

**K. Water Quality Control Plans.** The Clean Water Act requires the Regional Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, water quality objectives and criteria that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. The Regional Water Board adopted a *Water Quality Control Plan - Los Angeles Region* (hereinafter Basin Plan) on June 13, 1994 and has amended it on multiple occasions since 1994. The Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters in the Los Angeles Region. Pursuant to California Water Code section 13263(a), the requirements of this Order implement the Basin Plan. Beneficial uses applicable to the surface water bodies that receive discharges from the Los Angeles County MS4 generally include those listed below.

**Table 6. Basin Plan Beneficial Uses**

Discharge Point	Receiving Water Name	Beneficial Uses
All Municipal Separate Storm Sewer Systems (MS4s) discharge points within Los Angeles County coastal watersheds with the exception of the City of Long Beach	Multiple surface water bodies of the Los Angeles Region	Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Ground Water Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Limited Contact Recreation (LREC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Areas of Special Biological Significance (BIOL); Wildlife Habitat (WILD); Preservation of Rare and Endangered Species (RARE); Marine Habitat (MAR); Wetland Habitat (WET); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Shellfish Harvesting (SHELL)

**1. Total Maximum Daily Loads (TMDLs)**

Clean Water Act section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Water bodies that do not meet water quality standards are considered impaired and are placed on the state's "CWA Section 303(d) List". For each listed water body, the state is required to establish a TMDL of each pollutant impairing the water quality standards in that water body. A TMDL is a tool for implementing water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions. The

TMDL establishes the allowable pollutant loadings for a water body and thereby provides the basis to establish water quality-based controls. These controls should provide the pollution reduction necessary for a water body to meet water quality standards. A TMDL is the sum of the allowable pollutant loads of a single pollutant from all contributing point sources (the waste load allocations or WLAs) and non-point sources (load allocations or LAs), plus the contribution from background sources and a margin of safety. (40 CFR section 130.2(i).) MS4 discharges are considered point source discharges.

Numerous receiving waters within Los Angeles County do not meet water quality standards or fully support beneficial uses and therefore have been classified as impaired on the State's 303(d) List. The Regional Water Board and USEPA have each established TMDLs to address many of these water quality impairments. Pursuant to CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1)(vii)(B), this Order includes requirements that are consistent with and implement WLAs that are assigned to discharges from the Los Angeles County MS4 from 33 State-adopted and USEPA established TMDLs. This Order requires Permittees to comply with the TMDL Provisions in Part VI.E and Attachments L through R, which are consistent with the assumptions and requirements of the TMDL WLAs assigned to discharges from the Los Angeles County MS4. A comprehensive list of TMDLs by watershed management area and the Permittees subject to each TMDL is included in Attachment K.

Waste load allocations in these TMDLs are expressed in several ways depending on the nature of the pollutant and its impacts on receiving waters and beneficial uses. Bacteria WLAs assigned to MS4 discharges are expressed as the number of allowable exceedance days that a water body may exceed the Basin Plan water quality objectives for protection of the REC-1 beneficial use. Since the TMDLs and the WLAs contained therein are expressed as receiving water conditions, receiving water limitations have been included in this Order that are consistent with and implement the allowable exceedance day WLAs. Water quality-based effluent limitations are also included equivalent to the Basin Plan water quality objectives to allow the opportunity for Permittees to individually demonstrate compliance at an outfall or jurisdictional boundary, thus isolating the Permittee's pollutant contributions from those of other Permittees and from other pollutant sources to the receiving water.

WLAs for trash are expressed as progressively decreasing allowable amounts of trash discharges from a Permittee's jurisdictional area within the drainage area to the impaired water body. The Trash TMDLs require each Permittee to make annual reductions of its discharges of trash over a set period, until the numeric target of zero trash discharged from the MS4 is achieved. The Trash TMDLs specify a specific formula for calculating and allocating annual reductions in trash discharges from each jurisdictional area within a watershed. The formula results in specified annual amounts of trash that may be discharged from each jurisdiction into the receiving waters. Translation of the WLAs or compliance points described in the TMDLs into jurisdiction-specific load reductions from the baseline levels, as specified

in the TMDL, logically results in the articulation of an annual limitation on the amount of a pollutant that may be discharged. The specification of allowable annual trash discharge amounts meets the definition of an "effluent limitation", as that term is defined in subdivision (c) of section 13385.1 of the California Water Code. Specifically, the trash discharge limitations constitute a "numeric restriction ... on the quantity [or] discharge rate ... of a pollutant or pollutants that may be discharged from an authorized location."

TMDL WLAs for other pollutants (e.g., metals and toxics) are expressed as concentration and/or mass and water quality-based effluent limitations have been specified consistent with the expression of the WLA, including any applicable averaging periods. Some TMDLs specify that, if certain receiving water conditions are achieved, such achievement constitutes attainment of the WLA. In these cases, receiving water limitations and/or provisions outlining these alternate means of demonstrating compliance are included in the TMDL provisions in Part VI.E of this Order.

The inclusion of water quality-based effluent limitations and receiving water limitations to implement applicable WLAs provides a clear means of identifying required water quality outcomes within the permit and ensures accountability by Permittees to implement actions necessary to achieve the limitations.

A number of the TMDLs for bacteria, metals, and toxics establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL. TMDLs address commingled MS4 discharges by assigning a WLA to a group of MS4 Permittees based on co-location within the same subwatershed. 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. "Joint responsibility" means that the Permittees that have commingled MS4 discharges are responsible for implementing programs in their respective jurisdictions, or within the MS4 for which they are an owner and/or operator, to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such commingled MS4 discharges.

In these cases, federal regulations state that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are owners or operators (40 CFR § 122.26(a)(3)(vi)). Individual co-permittees are only responsible for their contributions to the commingled MS4 discharge. This Order does not require a Permittee to individually ensure that a commingled MS4 discharge meets the applicable water quality-based effluent limitations included in this Order, unless such Permittee is shown to be solely responsible for an exceedance.

Additionally, this Order allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving

water limitations. If such a demonstration is made, though the Permittee's discharge may commingle with that of other Permittees, the Permittee would not be held jointly responsible for the exceedance of the water quality-based effluent limitation or receiving water limitation. Individual co-permittees who demonstrate compliance with the water quality-based effluent limitations will not be held responsible for violations by non-compliant co-permittees.

Given the interconnected nature of the Permittees' MS4s, however, the Regional Water Board expects Permittees to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements.

- L. Ocean Plan.** In 1972, the State Water Resources Control Board (State Water Board) adopted the Water Quality Control Plan for Ocean Waters of California, California Ocean Plan (hereinafter Ocean Plan). The State Water Board adopted the most recent amended Ocean Plan on September 15, 2009. The Office of Administration Law approved it on March 10, 2010. On October 8, 2010, USEPA approved the 2009 Ocean Plan. The Ocean Plan is applicable, in its entirety, to the ocean waters of the State. In order to protect beneficial uses, the Ocean Plan establishes water quality objectives and a program of implementation. Pursuant to California Water Code section 13263(a), the requirements of this Order implement the Ocean Plan. The Ocean Plan identifies beneficial uses of ocean waters of the State to be protected as summarized in the table below.

**Table 7. Ocean Plan Beneficial Uses**

Discharge Point	Receiving Water Name	Beneficial Uses
All Municipal Separate Storm Sewer Systems (MS4s) discharge points within Los Angeles County coastal watersheds with the exception of the City of Long Beach	Pacific Ocean	Industrial Water Supply (IND); Water Contact (REC-1) and Non-Contact Recreation (REC-2), including aesthetic enjoyment; Navigation (NAV); Commercial and Sport Fishing (COMM); Mariculture; Preservation and Enhancement of Designated Areas of Special Biological Significance (ASBS); Rare and Endangered Species (RARE); Marine Habitat (MAR); Fish Migration (MIGR); Fish Spawning (SPWN) and Shellfish Harvesting (SHELL)

**M. Antidegradation Policy**

40 CFR section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal antidegradation policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintaining the Quality of the Waters of the State"). Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing water quality be maintained unless degradation is



justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. The permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16.

- N. Anti-Backsliding Requirements.** Section 402(o)(2) of the CWA and federal regulations at 40 CFR section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous permit.
- O. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code, §§ 2050 to 2115.5) or the Federal Endangered Species Act (16 U.S.C.A., §§ 1531 to 1544). This Order requires compliance with requirements to protect the beneficial uses of waters of the United States. Permittees are responsible for meeting all requirements of the applicable Endangered Species Act.
- P. Monitoring and Reporting.** Section 308(a) of the federal Clean Water Act, and 40 CFR sections 122.41(h), (j)-(l), 122.41(i), and 122.48, require that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. (40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) California Water Code section 13383 authorizes the Regional Water Board to establish monitoring, inspection, entry, reporting, and recordkeeping requirements. The Monitoring and Reporting Program establishes monitoring, reporting, and recordkeeping requirements that implement the federal and State laws and/or regulations. This Monitoring and Reporting Program is provided in Attachment E.
- Q. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR section 122.42, are provided in Attachment D. Dischargers must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR section 122.42 provided in Attachment D. The Regional Water Board has also included in Part VI of this Order various special provisions applicable to the Dischargers. A rationale for the various special provisions contained in this Order is provided in the attached Fact Sheet (Attachment F).
- R. State Mandates**  
Article XIII B, Section 6(a) of the California Constitution provides that whenever "any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service." The requirements of this Order do not constitute state mandates that are subject to a

subvention of funds for several reasons as described in detail in the attached Fact Sheet (Attachment F).

- S. California Water Code Section 13241.** The California Supreme Court has ruled that although California Water Code section 13263 requires the State and Regional Water Boards (collectively, Water Boards) to consider the factors set forth in California Water Code section 13241 when issuing an NPDES permit, the Water Boards may not consider the factors to justify imposing pollutant restriction that are less stringent than the applicable federal regulations require. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618, 626-627). However, when the pollutant restrictions in an NPDES permit are more stringent than federal law requires, California Water Code section 13263 requires that the Water Boards consider the factors described in section 13241 as they apply to those specific restrictions. As noted in the preceding finding, the Regional Water Board finds that the requirements in this permit are not more stringent than the minimum federal requirements. Therefore, a 13241 analysis is not required for permit requirements that implement the effective prohibition on the discharge of non-storm water discharges into the MS4, or for controls to reduce the discharge of pollutants in storm water to the maximum extent practicable, or other provisions that the Regional Water Board has determined appropriate to control such pollutants, as those requirements are mandated by federal law. Notwithstanding the above, the Regional Water Board has developed an economic analysis of the permit's requirements, consistent with California Water Code section 13241. That analysis is provided in the Fact Sheet (Attachment F of this Order).
- T. California Environmental Quality Act (CEQA).** This action to adopt an NPDES Permit is exempt from the provisions of Chapter 3 of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21100, et seq.) pursuant to California Water Code section 13389. (*County of Los Angeles v. Cal. Water Boards* (2006) 143 Cal.App.4th 985.)
- U. Notification of Interested Parties.** In accordance with State and federal laws and regulations, the Regional Water Board has notified the Permittees and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharges authorized by this Order and has provided them with an opportunity to provide written and oral comments. Details of notification, as well as the meetings and workshops held on drafts of the permit, are provided in the Fact Sheet of this Order.
- V. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all oral and written comments pertaining to the discharges authorized by this Order and the requirements contained herein. The Regional Water Board has prepared written responses to all timely comments, which are incorporated by reference as part of this Order.
- W.** This Order serves as an NPDES permit pursuant to CWA section 402 or amendments thereto, and becomes effective fifty (50) days after the date of its adoption, provided that the Regional Administrator, USEPA, Region IX, expresses no objections.
- X.** This Order supersedes Order No. 01-182 as amended, except for enforcement purposes.

**Y. Review by the State Water Board.** Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the Regional Water Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED,** that the Dischargers, in order to meet the provisions contained in Division 7 of the California Water Code (commencing with section 13000), and regulations, plans, and policies adopted thereunder, and the provisions of the Clean Water Act and regulations and guidelines adopted thereunder, shall comply with the following requirements:

### **III. DISCHARGE PROHIBITIONS**

#### **A. Prohibitions – Non-Storm Water Discharges**

- 1. Prohibition of Non-Storm Water Discharges.** 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 except where such discharges are either:
  - a. Authorized non-storm water discharges separately regulated by an individual or general NPDES permit;
  - b. Temporary non-storm water discharges authorized by USEPA<sup>3</sup> pursuant to sections 104(a) or 104(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that either: (i) will comply with water quality standards as applicable or relevant and appropriate requirements (“ARARs”) under section 121(d)(2) of CERCLA; or (ii) are subject to either (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation pursuant to 40 CFR. section 300.415(j);
  - c. Authorized non-storm water discharges from emergency fire fighting activities (i.e., flows necessary for the protection of life or property)<sup>4</sup>;
  - d. Natural flows, including:
    - i. Natural springs;

<sup>3</sup> These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or USEPA or State-required compliance testing of potable water treatment plants, as part of a USEPA authorized groundwater remediation action under CERCLA.

<sup>4</sup> Discharges from vehicle washing, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency fire fighting activities.

- ii. Flows from riparian habitats and wetlands;
  - iii. Diverted stream flows, authorized by the State or Regional Water Board;
  - iv. Uncontaminated ground water infiltration<sup>5</sup>;
  - v. Rising ground waters, where ground water seepage is not otherwise covered by a NPDES permit<sup>6</sup>; or
- e. Conditionally exempt non-storm water discharges in accordance with Parts III.A.2 and III.A.3 below.

**2. Conditional Exemptions from Non-Storm Water Discharge Prohibition.** The following categories of non-storm water discharges are conditionally exempt from the non-storm water discharge prohibition, provided they meet all required conditions specified below, or as otherwise approved by the Regional Water Board Executive Officer, in all areas regulated by this Order with the exception of direct discharges to Areas of Special Biological Significance (ASBS) within Los Angeles County. Conditional exemptions from the prohibition on non-storm water discharges through the MS4 to an ASBS are identified in Part III.A.3 below.

- a. **Conditionally Exempt Essential Non-Storm Water Discharges:** These consist of those discharges that fall within one of the categories below; meet all required best management practices (BMPs) as specified in i. and ii. below, including those enumerated in the referenced BMP manuals; are essential public services discharge activities; and are directly or indirectly required by other state or federal statute and/or regulation:
  - i. Discharges from essential *non-emergency* fire fighting activities<sup>7</sup> provided appropriate BMPs are implemented based on the CAL FIRE, Office of the State Fire Marshal's *Water-Based Fire Protection Systems Discharge Best Management Practices Manual* (September 2011) for water-based fire protection system discharges, and based on Riverside County's *Best Management Practices Plan for Urban Runoff Management* (May 1, 2004) or equivalent BMP manual for fire training activities and post-emergency fire fighting activities;
  - ii. Discharges from drinking water supplier distribution systems, where not otherwise regulated by an individual or general NPDES permit<sup>8</sup>, provided

<sup>5</sup> Uncontaminated ground water infiltration is water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

<sup>6</sup> A NPDES permit for discharges associated with ground water dewatering is required within the Los Angeles Region.

<sup>7</sup> This includes fire fighting training activities, which simulate emergency responses, and routine maintenance and testing activities necessary for the protection of life and property, including building fire suppression system maintenance and testing (e.g. sprinkler line flushing) and fire hydrant testing and maintenance. Discharges from vehicle washing are not considered essential and as such are not conditionally exempt from the non-storm water discharge prohibition.

<sup>8</sup> Drinking water supplier distribution system releases means sources of flows from drinking water storage, supply and distribution systems (including flows from system failures), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and minor non-invasive well maintenance activities not involving chemical addition(s) where not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG994005, or another separate NPDES permit.

appropriate BMPs are implemented based on the American Water Works Association (California-Nevada Section) *Guidelines for the Development of Your Best Management Practices (BMP) Manual for Drinking Water System Releases* (2005) or equivalent industry standard BMP manual. Additionally, each Permittee shall work with drinking water suppliers that may discharge to the Permittee's MS4 to ensure for all discharges greater than 100,000 gallons: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern<sup>9</sup> in the drinking water supplier distribution system release; and (3) record keeping by the drinking water supplier. Permittees shall require that the following information is maintained by the drinking water supplier(s) for all discharges to the MS4 (planned and unplanned) greater than 100,000 gallons: name of discharger, date and time of notification (for planned discharges), method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type of dechlorination equipment used, type of dechlorination chemicals used, concentration of residual chlorine, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data. Records shall be retained for five years and made available upon request by the Permittee or Regional Water Board.

- b. Those discharges that fall within one of the categories below, provided that the discharge itself is not a source of pollutants and meets all required conditions specified in Table 8 or as otherwise specified or approved by the Regional Water Board Executive Officer:
  - i. Dewatering of lakes<sup>10</sup>;
  - ii. Landscape irrigation;
  - iii. Dechlorinated/debrominated swimming pool/spa discharges<sup>11</sup>, where not otherwise regulated by a separate NPDES permit;
  - iv. Dewatering of decorative fountains<sup>12</sup>;
  - v. Non-commercial car washing by residents or by non-profit organizations;

<sup>9</sup> Pollutants of concern from drinking water supplier distribution system releases may include trash and debris, including organic matter, total suspended solids (TSS), residual chlorine, pH, and any pollutant for which there is a water quality-based effluent limitation (WQBEL) in Part VI.E applicable to discharges from the MS4 to the receiving water. Determination of the pollutants of concern for a particular discharge shall be based on an evaluation of the potential for the constituent(s) to be present in the discharge at levels that may cause or contribute to exceedances of applicable WQBELs or receiving water limitations.

<sup>10</sup> Dewatering of lakes does not include dewatering of drinking water reservoirs. Dewatering of drinking water reservoirs is addressed in Part III.A.2.a.ii.

<sup>11</sup> Conditionally exempt dechlorinated/debrominated swimming pool/spa discharges do not include swimming pool/spa filter backwash or swimming pool/spa water containing bacteria, detergents, wastes, or algaecides, or any other chemicals including salts from pools commonly referred to as "salt water pools" in excess of applicable water quality objectives.

<sup>12</sup> Conditionally exempt discharges from dewatering of decorative fountains do not include fountain water containing bacteria, detergents, wastes, or algaecides, or any other chemicals in excess of applicable water quality objectives.

vi. Street/sidewalk wash water<sup>13</sup>.

**3. Conditional Exemptions from Non-Storm Water Discharge Prohibition within an ASBS.** The following non-storm water discharges from the MS4 directly to an ASBS are conditionally exempt pursuant to the California Ocean Plan as specified below, provided that:

- a. The discharges are essential for emergency response purposes, structural stability, slope stability or occur naturally, including the following discharges:
  - i. Discharges associated with emergency fire fighting activities (i.e., flows necessary for the protection of life or property)<sup>14</sup>;
  - ii. Foundation and footing drains;
  - iii. Water from crawl space or basement pumps;
  - iv. Hillside dewatering;
  - v. Naturally occurring ground water seepage via a MS4; and
  - vi. Non-anthropogenic flows from a naturally occurring stream via a culvert or MS4, as long as there are no contributions of anthropogenic runoff.
- b. The discharges fall within one of the conditionally exempt essential non-storm water discharge categories in Part III.A.2.a. above.
- c. Conditionally exempt non-storm water discharges shall not cause or contribute<sup>15</sup> to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations in this Order or the water quality objectives in Chapter II of the Ocean Plan, or alter natural ocean water quality in an ASBS.

**4. Permittee Requirements.** Each Permittee shall:

- a. Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following for non-storm water discharges to the Permittee's MS4:
  - i. Notifies the Permittee of the planned discharge in advance, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual;
  - ii. Obtains any local permits required by the MS4 owner(s) and/or operator(s);

<sup>13</sup> Conditionally exempt non-storm water discharges of street/sidewalk wash water only include those discharges resulting from use of high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area in accordance with Regional Water Board Resolution No. 98-08. Conditionally exempt non-storm water discharges of street/sidewalk wash water do not include hosing of any sidewalk or street with a garden hose with a pressure nozzle.

<sup>14</sup> See note 4.

<sup>15</sup> Based on the water quality characteristics of the conditionally exempt non-storm water discharge itself.

- iii. Provides documentation that it has obtained any other necessary permits or water quality certifications<sup>16</sup> for the discharge;
  - iv. Conducts monitoring of the discharge, if required by the Permittee;
  - v. Implements BMPs and/or control measures as specified in Table 8 or in the applicable BMP manual(s) as a condition of the approval to discharge into the Permittee's MS4; and
  - vi. Maintains records of its discharge to the MS4, consistent with requirements in Table 8 or recommendations pursuant to the applicable BMP manual. For lake dewatering, Permittees shall require that the following information is maintained by the lake owner / operator: name of discharger, date and time of notification, method of notification, location of discharge, discharge pathway, receiving water, date of discharge, time of the beginning and end of the discharge, duration of the discharge, flow rate or velocity, total number of gallons discharged, type(s) of sediment controls used, pH of discharge, type(s) of volumetric and velocity controls used, and field and laboratory monitoring data. Records shall be made available upon request by the Permittee or Regional Water Board.
- b. Develop and implement procedures that minimize the discharge of landscape irrigation water into the MS4 by promoting conservation programs.
- i. Permittees shall coordinate with the local water purveyor(s), where applicable, to promote landscape water use efficiency requirements for existing landscaping, use of drought tolerant, native vegetation, and the use of less toxic options for pest control and landscape management.
  - ii. Permittees shall develop and implement a coordinated outreach and education program to minimize the discharge of irrigation water and pollutants associated with irrigation water consistent with Part VI.D.4.c of this Order (Public Information and Participation Program).
- c. Evaluate monitoring data collected pursuant to the Monitoring and Reporting Program (MRP) of this Order (Attachment E), and any other associated data or information, and determine whether any of the authorized or conditionally exempt non-storm water discharges identified in Parts III.A.1, III.A.2, and III.A.3 above are a source of pollutants that may be causing or contributing to an exceedance of applicable receiving water limitations in Part V and/or water quality-based effluent limitations in Part VI.E. To evaluate monitoring data, the Permittee shall either use applicable interim or final water quality-based effluent limitations for the pollutant or, if there are no applicable interim or final water quality-based effluent limitations for the pollutant, use applicable action levels provided in Attachment G. Based on non-storm water outfall-based monitoring as implemented through the MRP, if monitoring data show

<sup>16</sup> Pursuant to the Federal Clean Water Act § 401.

exceedances of applicable water quality-based effluent limitations or action levels, the Permittee shall take further action to determine whether the discharge is causing or contributing to exceedances of receiving water limitations in Part V.

- d. If the Permittee determines that any of the conditionally exempt non-storm water discharges identified in Part III.A.2.b above is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, the Permittee(s) shall report its findings to the Regional Water Board in its annual report. Based on this determination, the Permittee(s) shall also either:
    - i. Effectively prohibit<sup>17</sup> the non-storm water discharge to the MS4; or
    - ii. Impose conditions in addition to those in Table 8, subject to approval by the Regional Water Board Executive Officer, on the non-storm water discharge such that it will not be a source of pollutants; or
    - iii. Require diversion of the non-storm water discharge to the sanitary sewer; or
    - iv. Require treatment of the non-storm water discharge prior to discharge to the receiving water.
  - e. If the Permittee determines that any of the authorized or conditionally exempt essential non-storm water discharges identified in Parts III.A.1.a through III.A.1.c, III.A.2.a, or III.A.3 above is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, the Permittee shall notify the Regional Water Board within 30 days if the non-storm water discharge is an authorized discharge with coverage under a separate NPDES permit or authorized by USEPA under CERCLA in the manner provided in Part III.A.1.b above, or a conditionally exempt essential non-storm water discharge or emergency non-storm water discharge.
  - f. If the Permittee prohibits the discharge from the MS4, as per Part III.A.4.d.i, then the Permittee shall implement procedures developed under Part VI.D.9 (Illicit Connections and Illicit Discharges Elimination Program) in order to eliminate the discharge to the MS4.
5. If a Permittee demonstrates that the water quality characteristics of a specific authorized or conditionally exempt essential non-storm water discharge resulted in an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations during a specific sampling event, the Permittee shall not be found in violation of applicable receiving water limitations and/or water quality-based effluent limitations for that specific sampling event. Such

---

<sup>17</sup> To "effectively prohibit" means to not allow the non-storm water discharge through the MS4 unless the discharger obtains coverage under a separate NPDES permit prior to discharge to the MS4.



demonstration must be based on source specific water quality monitoring data from the authorized or conditionally exempt essential non-storm water discharge or other relevant information documenting the characteristics of the specific non-storm water discharge as identified in Table 8.

6. Notwithstanding the above, the Regional Water Board Executive Officer, based on an evaluation of monitoring data and other relevant information for specific categories of non-storm water discharges, may modify a category or remove categories of conditionally exempt non-storm water discharges from Parts III.A.2 and III.A.3 above if the Executive Officer determines that a discharge category is a source of pollutants that causes or contributes to an exceedance of applicable receiving water limitations and/or water quality-based effluent limitations, or may require that a discharger obtain coverage under a separate individual or general State or Regional Water Board permit for a non-storm water discharge.

**Table 8. Required Conditions for Conditionally Exempt Non-Storm Water Discharges**

Discharge Category	General Conditions Under Which Discharge Through the MS4 is Allowed	Conditions/BMPs that are Required to be Implemented Prior to Discharge Through the MS4
All Discharge Categories	See discharge specific conditions below.	<p>Ensure conditionally exempt non-storm water discharges avoid potential sources of pollutants in the flow path to prevent introduction of pollutants to the MS4 and receiving water.</p> <p>Whenever there is a discharge of 100,000 gallons or more into the MS4, Permittees shall require advance notification by the discharger to the potentially affected MS4 Permittees, including at a minimum the LACFCD, if applicable, and the Permittee with jurisdiction over the land area from which the discharge originates.</p>
Dewatering of lakes	Discharge allowed only if all necessary permits/water quality certifications for dredge and fill activities, including water diversions, are obtained prior to discharge.	<p>Ensure procedures for advanced notification by the lake owner / operator to the Permittee(s) no less than 72 hours prior to the planned discharge.</p> <p>Immediately prior to discharge, visible trash on the shoreline or on the surface of the lake shall be removed and disposed of in a legal manner.</p> <p>Immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p> <p>Discharges shall be volumetrically and velocity controlled to minimize resuspension of sediments.</p> <p>Measures shall be taken to stabilize lake bottom sediments.</p> <p>Ensure procedures for water quality monitoring for pollutants of concern<sup>18</sup> in the lake.</p> <p>Ensure record-keeping of lake dewatering by the lake owner / operator.</p>

<sup>18</sup> Pollutants of concern include, at a minimum, trash and debris, including organic matter, TSS, and any pollutant for which there is a water quality-based effluent limitation in Part VI.E for the lake and/or receiving water.

MS4 Discharges within the  
 Coastal Watersheds of Los Angeles County

<p>Landscape irrigation using potable water</p>	<p>Discharge allowed if runoff due to potable landscape irrigation is minimized through the implementation of an ordinance specifying water efficient landscaping standards, as well as an outreach and education program focusing on water conservation and landscape water use efficiency.</p>	<p>Implement BMPs to minimize runoff and prevent introduction of pollutants to the MS4 and receiving water.          Implement water conservation programs to minimize discharge by using less water.</p>
<p>Landscape irrigation using reclaimed or recycled water</p>	<p>Discharge of reclaimed or recycled water runoff from landscape irrigation is allowed if the discharge is in compliance with the producer and distributor operations and management (O&amp;M) plan, and all relevant portions thereof, including the Irrigation Management Plan.</p>	<p>Discharges must comply with applicable O&amp;M Plans, and all relevant portions thereof, including the Irrigation Management Plan.</p>

<p>Dechlorinated/debrominated swimming pool/spa discharges</p>	<p>Discharges allowed after implementation of specified BMPs. Pool or spa water containing copper-based algaecides is not allowed to be discharged to the MS4. Discharges of cleaning waste water and filter backwash allowed only if authorized by a separate NPDES permit.</p>	<p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water. Swimming pool water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L. Swimming pool water shall not contain any detergents, wastes, or algaecides, or any other chemicals including salts from pools commonly referred to as "salt water pools" in excess of applicable water quality objectives.<sup>19</sup> Swimming pool discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units. Swimming pool discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration. Ensure procedures for advanced notification by the pool owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more. For discharges of 100,000 gallons or more, immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p>
<p>Dewatering of decorative fountains</p>	<p>Discharges allowed after implementation of specified BMPs. Fountain water containing copper-based algaecides may not be discharged to the MS4. Fountain water containing dyes may not be discharged to the MS4.</p>	<p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water. Fountain water must be dechlorinated or debrominated using holding time, aeration, and/or sodium thiosulfate. Chlorine residual in the discharge shall not exceed 0.1 mg/L. Fountain discharges are to be pH adjusted, if necessary, and be within the range of 6.5 and 8.5 standard units. Fountain discharges shall be volumetrically and velocity controlled to promote evaporation and/or infiltration. Ensure procedures for advanced notification by the fountain owner to the Permittee(s) at least 72 hours prior to planned discharge for discharges of 100,000 gallons or more. For discharges of 100,000 gallons or more, immediately prior to discharge, the discharge pathway and the MS4 inlet to which the discharge is directed, shall be inspected and cleaned out.</p>
<p>Non-commercial car washing by residents or by non-</p>	<p>Discharges allowed after implementation of specified BMPs.</p>	<p>Implement BMPs and ensure discharge avoids potential sources of pollutants in the flow path to prevent introduction of pollutants prior to discharge to the MS4 and receiving water. Minimize the amount of water used by employing water conservation practices such as turning off</p>

<sup>19</sup> Applicable mineral water quality objectives for surface waters are contained in Chapter 3 of the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties.

profit organizations		<p>nozzles or kinking the hose when not spraying a car, and using a low volume pressure washer. Encourage use of biodegradable, phosphate free detergents and non-toxic cleaning products. Where possible, wash cars on a permeable surface where wash water can percolate into the ground (e.g. gravel or grassy areas). Empty buckets of soapy or rinse water into the sanitary sewer system (e.g., sinks or toilets).</p>
Street/sidewalk wash water	Discharges allowed after implementation of specified BMPs.	<p>Sweeping should be used as an alternate BMP whenever possible and sweepings should be disposed of in the trash. BMPs shall be in accordance with Regional Water Board Resolution No. 98-08 that requires: 1) removal of trash, debris, and free standing oil/grease spills/leaks (use absorbent material if necessary) from the area before washing and 2) use of high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square foot of sidewalk area. In areas of unsanitary conditions (e.g., areas where the congregation of transient populations can reasonably be expected to result in a significant threat to water quality), whenever practicable, Permittees shall collect and divert street and alley wash water from the Permittee's street and sidewalk cleaning public agency activities to the sanitary sewer.</p>

#### IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

##### A. Effluent Limitations

1. **Technology Based Effluent Limitations:** Each Permittee shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).
2. **Water Quality-Based Effluent Limitations (WQBELs).** This Order establishes WQBELs consistent with the assumptions and requirements of all available TMDL waste load allocations assigned to discharges from the Permittees' MS4s.
  - a. Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.

##### B. Land Discharge Specifications – Not Applicable

##### C. Reclamation Specifications – Not Applicable

#### V. RECEIVING WATER LIMITATIONS

##### A. Receiving Water Limitations

1. Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.
2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible<sup>20</sup>, shall not cause or contribute to a condition of nuisance.
3. The Permittees shall comply with Parts V.A.1 and V.A.2 through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the storm water management program and its components and other requirements of this Order including any modifications. The storm water management program and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of receiving water limitations persist, notwithstanding implementation of the storm water management program and its components and other requirements of this Order, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:
  - a. Upon a determination by either the Permittee or the Regional Water Board that discharges from the MS4 are causing or contributing to an exceedance of an applicable Receiving Water Limitation, the Permittee shall promptly notify and thereafter submit an Integrated Monitoring Compliance Report (as described in the Program Reporting Requirements, Part XVIII.A.5 of the Monitoring and Reporting Program) to the Regional Water Board for approval. The Integrated Monitoring Compliance shall describe the BMPs that are currently being

<sup>20</sup> Pursuant to 40 CFR § 122.26(a)(3)(vi), a Permittee is only responsible for discharges of storm water and non-storm water from the MS4 for which it is an owner or operator.

implemented by the Permittee and additional BMPs, including modifications to current BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of receiving water limitations. The Integrated Monitoring Compliance Report shall include an implementation schedule. This Integrated Monitoring Compliance Report shall be incorporated in the annual Storm Water Report unless the Regional Water Board directs an earlier submittal. The Regional Water Board may require modifications to the Integrated Monitoring Compliance Report.

- b. The Permittee shall submit any modifications to the Integrated Monitoring Compliance Report required by the Regional Water Board within 30 days of notification.
  - c. Within 30 days following the Regional Water Board Executive Officer's approval of the Integrated Monitoring Compliance Report, the Permittee shall revise the storm water management program and its components and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.
  - d. The Permittee shall implement the revised storm water management program and its components and monitoring program according to the approved implementation schedule.
4. So long as the Permittee has complied with the procedures set forth in Part V.A.3. above and is implementing the revised storm water management program and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board to modify current BMPs or develop additional BMPs.

## **B. Ground Water Limitations – Not Applicable**

## **VI. PROVISIONS**

### **A. Standard Provisions**

1. **Federal Standard Provisions.** Each Permittee shall comply with all Standard Provisions included in Attachment D of this Order, in accordance with 40 CFR sections 122.41 and 122.42.
2. **Legal Authority**
  - a. Each Permittee must establish and maintain adequate legal authority, within its respective jurisdiction, to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize or enable the Permittee to:

- i.** Control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction activity and control the quality of storm water discharged from industrial and construction sites. This requirement applies both to industrial and construction sites with coverage under an NPDES permit, as well as to those sites that do not have coverage under an NPDES permit.
- ii.** Prohibit all non-storm water discharges through the MS4 to receiving waters not otherwise authorized or conditionally exempt pursuant to Part III.A;
- iii.** Prohibit and eliminate illicit discharges and illicit connections to the MS4;
- iv.** Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;
- v.** Require compliance with conditions in Permittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);
- vi.** Utilize enforcement mechanisms to require compliance with applicable ordinances, permits, contracts, or orders;
- vii.** Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Co-permittees;
- viii.** Control of the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other owners of the MS4 such as the State of California Department of Transportation;
- ix.** Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with applicable municipal ordinances, permits, contracts and orders, and with the provisions of this Order, including the prohibition of non-storm water discharges into the MS4 and receiving waters. This means the Permittee must have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from entities discharging into its MS4;
- x.** Require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality standards/receiving water limitations;
- xi.** Require that structural BMPs are properly operated and maintained; and
- xii.** Require documentation on the operation and maintenance of structural BMPs and their effectiveness in reducing the discharge of pollutants to the MS4.



- b. Each Permittee must submit a statement certified by its chief legal counsel that the Permittee has the legal authority within its jurisdiction to implement and enforce each of the requirements contained in 40 CFR § 122.26(d)(2)(i)(A-F) and this Order. Each Permittee shall submit this certification annually as part of its Annual Report beginning with the first Annual Report required under this Order. These statements must include:
  - i. Citation of applicable municipal ordinances or other appropriate legal authorities and their relationship to the requirements of 40 CFR § 122.26(d)(2)(i)(A)-(F) and of this Order; and
  - ii. Identification of the local administrative and legal procedures available to mandate compliance with applicable municipal ordinances identified in subsection (i) above and therefore with the conditions of this Order, and a statement as to whether enforcement actions can be completed administratively or whether they must be commenced and completed in the judicial system.

### **3. Fiscal Resources**

- a. Each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order.
- b. Each Permittee shall also enumerate and describe in its Annual Report the source(s) of funds used in the past year, and proposed for the coming year, to meet necessary expenditures on the Permittee's storm water management program.

### **4. Responsibilities of the Permittees**

- a. Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries. Permittees are not responsible for the implementation of the provisions applicable to other Permittees. Each Permittee shall:
  - i. Comply with the requirements of this Order and any modifications thereto.
  - ii. Coordinate among its internal departments and agencies, as necessary, to facilitate the implementation of the requirements of this Order applicable to such Permittees in an efficient and cost-effective manner.
  - iii. Participate in intra-agency coordination (e.g. Planning Department, Fire Department, Building and Safety, Code Enforcement, Public Health, Parks and Recreation, and others) and inter-agency coordination (e.g. co-

Permittees, other NPDES permittees) necessary to successfully implement the provisions of this Order.

## **5. Public Review**

- a. All documents submitted to the Regional Water Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended)) and the Public Records Act (Cal. Government Code § 6250 et seq.).
- b. All documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

## **6. Regional Water Board Review**

Any formal determination or approval made by the Regional Water Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Water Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Water Board.

## **7. Reopener and Modification**

1. This Order may be modified, revoked, reissued, or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62, 122.63, 122.64, 124.5, 125.62, and 125.64. Causes for taking such actions include, but are not limited to:

Endangerment to human health or the environment resulting from the permitted activity, including information that the discharge(s) regulated by this Order may have the potential to cause or contribute to adverse impacts on water quality and/or beneficial uses;

Acquisition of newly-obtained information that would have justified the application of different conditions if known at the time of Order adoption;

To address changed conditions identified in required reports or other sources deemed significant by the Regional Water Board;

To incorporate provisions as a result of future amendments to the Basin Plan, such as a new or revised water quality objective or the adoption or reconsideration of a TMDL, including the program of implementation. Within 18 months of the effective date of a revised TMDL or as soon as practicable thereafter, where the revisions warrant a change to the provisions of this Order, the Regional Water Board may modify this Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation;

To incorporate provisions as a result of new or amended statewide water quality control plans or policies adopted by the State Water Board, or in consideration of any State Water Board action regarding the precedential language of State Water Board Order WQ 99-05;

To incorporate provisions as a result of the promulgation of new or amended federal or state laws or regulations, USEPA guidance concerning regulated activities, or judicial decisions that becomes effective after adoption of this Order.

To incorporate effluent limitations for toxic constituents determined to be present in significant amount in the discharge through a more comprehensive monitoring program included as part of this Order and based on the results of the reasonable potential analysis;

In accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include requirements for the implementation of the watershed management approach or to include new Minimum Levels (MLs); and/or

To include provisions or modifications to WQBELs in Part VI.E and Attachments L-R in this Order prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges. Such modifications shall be based on the Regional Water Board's evaluation of whether Watershed Management Programs in Part VI.C. have resulted in attainment of interim WQBELs for storm water and review of relevant research, including but not limited to data and information provided by Permittees and other stakeholders, on storm water quality and the efficacy and reliability of storm water control technologies. Provisions or modifications to WQBELs in Part VI.E. shall only be included in this Order where there is evidence that storm water control technologies can reliably achieve final WQBELs.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

Violation of any term or condition contained in this Order;

Obtaining this Order by misrepresentation, or failure to disclose all relevant facts;  
or

A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by a Permittee for a modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity, following the procedures at 40 CFR section 122.63, if processed as a minor modification. Minor modifications may only:

Correct typographical errors; or

Require more frequent monitoring or reporting by a Permittee.

8. Any discharge of waste to any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of this Order.
9. A copy of this Order shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees responsible for implementation of the provisions of this Order and members of the public.
10. The discharge of any product registered under the Federal Insecticide, Fungicide, and Rodenticide Act to any waste stream that may ultimately be released to waters of the United States, is prohibited, unless specifically authorized elsewhere in this Order or another NPDES permit. This requirement is not applicable to products used for lawn and agricultural purposes.
11. Oil or oily material, chemicals, refuse, or other pollutionable materials shall not be stored or deposited in areas where they may be picked up by rainfall and carried off of the property and/or discharged to surface waters. Any such spill of such materials shall be contained and removed immediately.
12. If there is any storage of hazardous or toxic materials or hydrocarbons at a facility owned and/or operated by a Permittee and if the facility is not manned at all times, a 24-hour emergency response telephone number shall be prominently posted where it can easily be read from the outside.

### **13. Enforcement**

- a. Violation of any of the provisions of this Order may subject the violator to any of the penalties described herein or in Attachment D of this Order, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalty may be applied for each kind of violation.
5. Failure to comply with provisions or requirements of this Order, or violation of other applicable laws or regulations governing discharges through the MS4 to receiving waters, may subject a Permittee to administrative or civil liabilities, criminal penalties, and/or other enforcement remedies to ensure compliance. Additionally, certain violations may subject a Permittee to civil or criminal enforcement from appropriate local, state, or federal law enforcement entities.
6. The California Water Code provides that any person who violates a waste discharge requirement or a provision of the California Water Code is subject to civil penalties of up to \$5,000 per day, \$10,000 per day, or \$25,000 per day of violation, or when the

violation involves the discharge of pollutants, is subject to civil penalties of up to \$10 per gallon per day or \$25 per gallon per day of violation; or some combination thereof, depending on the violation, or upon the combination of violations.

7. California Water Code section 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each serious violation. Pursuant to California Water Code section 13385(h)(2), a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of 40 CFR section 123.45 specifies the Group I and II pollutants. Pursuant to California Water Code section 13385.1(a)(1), a "serious violation" is also defined as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations."
8. California Water Code section 13385(i) requires the Regional Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each violation whenever a person violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
9. Pursuant to California Water Code section 13385.1(d), for the purposes of section 13385.1 and subdivisions (h), (i), and (j) of section 13385, "effluent limitation" means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for these purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.
10. Unlike subdivision (c) of California Water Code section 13385, where violations of effluent limitations may be assessed administrative civil liability on a per day basis, the mandatory minimum penalties provisions identified above require the Regional Water Board to assess mandatory minimum penalties for "each violation" of an effluent limitation. Some water quality-based effluent limitations in Attachments L through R of this Order (e.g., trash, as described immediately below) are expressed as annual effluent limitations. Therefore, for such limitations, there can be no more than one violation of each interim or final effluent limitation per year.

#### **11. Trash TMDLs.**

Consistent with the 2009 amendments to Order No. 01-182 to incorporate the Los Angeles River Trash TMDL, the water quality-based effluent limitations in Attachments L through R of this Order for trash are expressed as annual effluent limitations. Therefore, for such limitations, there can be no more than one

violation of each interim or final effluent limitation per year. Trash is considered a Group I pollutant, as specified in Appendix A to 40 CFR section 123.45. Therefore, each annual violation of a trash effluent limitation in Attachments L through R of this Order by forty percent or more would be considered a "serious violation" under California Water Code section 13385(h). With respect to the final effluent limitation of zero trash, any detectable discharge of trash necessarily is a serious violation, in accordance with the State Water Board's Enforcement Policy. Violations of the effluent limitations in Attachments L through R of this Order would not constitute "chronic" violations that would give rise to mandatory liability under California Water Code section 13385(i) because four or more violations of the effluent limitations subject to a mandatory penalty cannot occur in a period of six consecutive months.

For the purposes of enforcement under California Water Code section 13385, subdivisions (a), (b), and (c), not every storm event may result in trash discharges. In trash TMDLs adopted by the Regional Water Board, the Regional Water Board states that improperly deposited trash is mobilized during storm events of greater than 0.25 inches of precipitation. Therefore, violations of the effluent limitations are limited to the days of a storm event of greater than 0.25 inches. Once a Permittee has violated the annual effluent limitation, any subsequent discharges of trash during any day of a storm event of greater than 0.25 inches during the same storm year constitutes an additional "day in which the violation [of the effluent limitation] occurs".

14. This Order does not exempt any Permittee from compliance with any other laws, regulations, or ordinances that may be applicable.
15. The provisions of this Order are severable. If any provisions of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected.

#### **B. Monitoring and Reporting Program (MRP) Requirements**

Dischargers shall comply with the MRP and future revisions thereto, in Attachment E of this Order or may, in coordination with an approved Watershed Management Program per Part VI.C, implement a customized monitoring program that achieves the five Primary Objectives set forth in Part II.A. of Attachment E and includes the elements set forth in Part II.E. of Attachment E.

## **C. Watershed Management Programs**

### **1. General**

- a.** The purpose of this Part VI.C is to allow Permittees the flexibility to develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.
- b.** Participation in a Watershed Management Program is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A. (Receiving Water Limitations), Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R, by customizing the control measures in Parts III.A.4 (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures).
- c.** Customized strategies, control measures, and BMPs shall be implemented on a watershed basis, where applicable, through each Permittee's storm water management program and/or collectively by all participating Permittees through a Watershed Management Program.
- d.** The Watershed Management Programs shall ensure that discharges from the Permittee's MS4: (i) achieve applicable water quality-based effluent limitations in Part VI.E and Attachments L through R pursuant to the corresponding compliance schedules, (ii) do not cause or contribute to exceedances of receiving water limitations in Parts V.A and VI.E and Attachments L through R, and (iii) do not include non-storm water discharges that are effectively prohibited pursuant to Part III.A. The programs shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1.
- e.** Watershed Management Programs shall be developed either collaboratively or individually using the Regional Water Board's Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.
- f.** Each Watershed Management Program shall be consistent with Part VI.C.5-C.8 and shall:
  - i.** Prioritize water quality issues resulting from storm water and non-storm water discharges from the MS4 to receiving waters within each WMA,
  - ii.** Identify and implement strategies, control measures, and BMPs to achieve the outcomes specified in Part VI.C.1.d,
  - iii.** Execute an integrated monitoring program and assessment program pursuant to Attachment E – MRP, Part IV to determine progress towards achieving applicable limitations and/or action levels in Attachment G, and

- iv. Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program are achieved in the required timeframes.
- v. Provide appropriate opportunity for meaningful stakeholder input, including but not limited to, a permit-wide watershed management program technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval. The composition of the TAC may include at least one Permittee representative from each Watershed Management Area for which a Watershed Management Program will be developed, and must include a minimum of one public representative from a non-governmental organization with public membership, and staff from the Regional Water Board and USEPA Region IX.
- g. Permittees may elect to develop an enhanced Watershed Management Program (EWMP). An EWMP is one that comprehensively evaluates opportunities, within the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects that, wherever feasible, retain (i) all non-storm water runoff and (ii) all storm water runoff from the 85<sup>th</sup> percentile, 24-hour storm event for the drainage areas tributary to the projects, while also achieving other benefits including flood control and water supply, among others. In drainage areas within the EWMP area where retention of the 85<sup>th</sup> percentile, 24-hour storm event is not feasible, the EWMP shall include a Reasonable Assurance Analysis to demonstrate that applicable water quality based effluent limitations and receiving water limitations shall be achieved through implementation of other watershed control measures. An EWMP shall:
  - i. Be consistent with the provisions in Part VI.C.1.a.-f and VI.C.5-C.8;
  - ii. Incorporate applicable State agency input on priority setting and other key implementation issues;
  - iii. Provide for meeting water quality standards and other CWA obligations by utilizing provisions in the CWA and its implementing regulations, policies and guidance;
  - iv. Include multi-benefit regional projects to ensure that MS4 discharges achieve compliance with all final WQBELs set forth in Part VI.E. and do not cause or contribute to exceedances of receiving water limitations in Part V.A. by retaining through infiltration or capture and reuse the storm water volume from the 85<sup>th</sup> percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.;



- v. In drainage areas where retention of the storm water volume from the 85<sup>th</sup> percentile, 24-hour event is not technically feasible, include other watershed control measures to ensure that MS4 discharges achieve compliance with all interim and final WQBELs set forth in Part VI.E. with compliance deadlines occurring after approval of a EWMP and to ensure that MS4 discharges do not cause or contribute to exceedances of receiving water limitations in Part V.A.;
- vi. Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance;
- vii. Incorporate effective innovative technologies, approaches and practices, including green infrastructure;
- viii. Ensure that existing requirements to comply with technology-based effluent limitations and core requirements (e.g., including elimination of non-storm water discharges of pollutants through the MS4, and controls to reduce the discharge of pollutants in storm water to the maximum extent practicable) are not delayed;
- ix. Ensure that a financial strategy is in place.

## **2. Compliance with Receiving Water Limitations Not Otherwise Addressed by a TMDL through a WMP or EWMP**

- a. For receiving water limitations in Part V.A. associated with water body-pollutant combinations not addressed through a TMDL, but which a Permittee elects to address through a Watershed Management Program or EWMP as set forth in this Part VI.C., a Permittee shall comply as follows:
  - i. **For pollutants that are in the same class<sup>21</sup> as those addressed in a TMDL for the watershed and for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**
    - (1) Permittees shall demonstrate that the Watershed Control Measures to achieve the applicable TMDL provisions identified pursuant to Part VI.C.5.b.iv.(3) will also adequately address contributions of the pollutant(s) within the same class from MS4 discharges to receiving waters, consistent with the assumptions and requirements of the corresponding TMDL provisions, including interim and final requirements and deadlines for their achievement, such that the

<sup>21</sup> Pollutants are considered in a similar class if they have similar fate and transport mechanisms, can be addressed via the same types of control measures, and within the same timeline already contemplated as part of the Watershed Management Program for the TMDL.

MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.

- (2) Permittees shall include the water body-pollutant combination(s) in the Reasonable Assurance Analysis in Part VI.C.5.b.iv.(5).
- (3) Permittees shall identify milestones and dates for their achievement consistent with those in the corresponding TMDL.

**ii. For pollutants that are not in the same class as those addressed in a TMDL for the watershed, but for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

- (1) Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (3) Permittees shall include the water body-pollutant in the Reasonable Assurance Analysis in Part VI.C.5.b.iv.(5).
- (4) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.
- (5) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
  - (a) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85<sup>th</sup> percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
  - (b) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible and where the Regional

Water Board determines that MS4 discharges cause or contribute to the water quality impairment, participating Permittees may initiate development of a stakeholder-proposed TMDL upon approval of the Watershed Management Program or EWMP. For MS4 discharges from these drainage areas to the receiving waters, any extension of this compliance mechanism beyond the term of this Order shall be consistent with the implementation schedule in a TMDL for the waterbody pollutant combination(s) adopted by the Regional Water Board.

**iii. For pollutants for which there are exceedances of receiving water limitations in Part V.A., but for which the water body is not identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

- (1) Upon an exceedance of a receiving water limitation, based on data collected pursuant to the MRP and approved IMPs and CIMPs, Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) If MS4 discharges are identified as a source of the pollutant(s) that has caused or contributed to, or has the potential to cause or contribute to, the exceedance(s) of receiving water limitations in Part V.A., Permittees shall address contributions of the pollutant(s) from MS4 discharges through modifications to the WMP or EWMP pursuant to Part VI.C.8.a.ii.
  - (a) In a modified WMP or EWMP, Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
  - (b) Permittees shall modify the Reasonable Assurance Analysis pursuant to Part VI.C.5.b.iv.(5) to address the pollutant(s).
  - (c) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.

- (d) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
- (i) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85<sup>th</sup> percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
  - (ii) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible, for newly identified exceedances of receiving water limitations, a Permittee may request that the Regional Water Board approve a modification to its WMP or EWMP to include these additional water body-pollutant combinations.
- b. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. of this Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or EWMP.
- c. If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement.
- d. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. not otherwise addressed by a TMDL, if all the following requirements are met:
- i. Provides timely notice of its intent to develop a WMP or EWMP,
  - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
  - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of

pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and

- iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

### **3. Compliance with Receiving Water Limitations Addressed by a TMDL through a WMP or EWMP**

- a. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with provisions pertaining to applicable interim water quality based effluent limitations and interim receiving water limitations in Part VI.E. and Attachments L-R for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.
- b. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A., if all the following requirements are met:
  - i. Provides timely notice of its intent to develop a WMP or EWMP,
  - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
  - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
  - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.
- c. Subdivision b. does not apply to receiving water limitations corresponding to final compliance deadlines pursuant to TMDL provisions in Part VI.E. that have passed or will occur prior to approval of a WMP or EWMP.

### **4. Process**

- a. Timelines for Implementation
  - i. Implementation of the following requirements shall occur per the schedule specified in Table 9 below:

**Table 9. Watershed Management Program Implementation Requirements**

Part	Provision	Due Date
VI.C.4.b	Notify Regional Water Board of intent to develop Watershed Management Program or enhanced WMP and request submittal date for draft program plan	6 months after Order effective date
VI.C.4.c	For Permittee(s) that elect not to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	1 year after Order effective date
VI.C.4.c	For Permittee(s) that elect to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	18 months after Order effective date
VI.C.4.c.iv	For Permittees that elect to collaborate on an enhanced WMP that meets the requirements of Part VI.C.4.c.iv, submit draft plan to Regional Water Board	18 months after Order effective date, provide final work plan for development of enhanced WMP 30 months after Order effective date, submit draft plan
VI.C.4.c	Comments provided to Permittees by Regional Water Board	4 months after submittal of draft plan
VI.C.4.c	Submit final plan to Regional Water Board	3 months after receipt of Regional Water Board comments on draft plan
VI.C.4.c	Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board	3 months after submittal of final plan
VI.C.6	Begin implementation of Watershed Management Program or EWMP	Upon approval of final plan
VI.C.8	Comprehensive evaluation of Watershed Management	Every two years from date of

Program or EWMP and submittal of modifications to plan	approval
--------------------------------------------------------------	----------

- b. Permittees that elect to develop a Watershed Management Program or EWMP must notify the Regional Water Board no later than six months after the effective date of this Order.**

  - i. Such notification shall specify if the Permittee(s) are requesting a 12-month or 18-month submittal date for the draft Watershed Management Program, per Part VI.C.4.c.i – ii, or if the Permittees are requesting a 18/30-month submittal date for the draft EWMP per Part VI.C.4.c.iv.**
  - ii. As part of their notice of intent to develop a WMP or EWMP, Permittees shall identify all applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and the applicable attachment(s) with compliance deadlines occurring prior to approval of a WMP or EWMP. Permittees shall identify watershed control measures, where possible from existing TMDL implementation plans, that will be implemented by participating Permittees concurrently with the development of a Watershed Management Program or EWMP to ensure that MS4 discharges achieve compliance with applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations set forth in Part VI.E. and the applicable attachment(s) by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.**
  - iii. As part of their notification, Permittees electing to develop an EWMP shall submit all of the following in addition to the requirements of Part VI.C.4.b.i.-ii.:**

    - (1) Plan concept and geographical scope,**
    - (2) Cost estimate for plan development,**
    - (3) Executed MOU/agreement among participating Permittees to fund plan development, or final draft MOU among participating Permittees along with a signed letter of intent from each participating City Manager or head of agency. If a final draft MOU is submitted, the MOU shall be fully executed by all participating Permittees within 12 months of the effective date of this Order.**
    - (4) Interim milestones for plan development and deadlines for their achievement,**
    - (5) Identification of, and commitment to fully implement, one structural BMP or a suite of BMPs at a scale that provides meaningful water quality improvement within each watershed covered by the plan within 30 months of the effective date of this Order in addition to**

watershed control measures to be implemented pursuant to b.ii. above. The structural BMP or suite of BMPs shall be subject to approval by the Regional Water Board Executive Officer, and

- (6) Demonstration that the requirements in Parts VI.C.4.c.iv.(1) and (2) have been met.
- c. Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board as follows:
- i. For Permittees that elect to collaborate on the development of a Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area covered by the WMP:
    - (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
    - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
    - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.i(1) and (2) have been met in greater than 50% of the watershed area.
  - ii. For a Permittee that elects to develop an individual Watershed Management Program, the Permittee shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met:
    - (1) Demonstrate that there is a LID ordinance in place for the Permittee's jurisdiction and/or commence development of a Low Impact Development (LID) ordinance for the Permittee's jurisdiction meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
    - (2) Demonstrate that there is a green streets policy in place for the Permittee's jurisdiction and/or commence development of a policy





- ii. Continue to implement watershed control measures to eliminate non-storm water discharges through the MS4 that are a source of pollutants to receiving waters consistent with CWA section 402(p)(3)(B)(ii), and
  - iii. Implement watershed control measures, where possible from existing TMDL implementation plans, to ensure that MS4 discharges achieve compliance with interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and set forth in Attachments L through R by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.
- e. Permittees that do not elect to develop a Watershed Management Program or EWMP, or that do not have an approved WMP or EWMP within 28 or 40 months, respectively, of the effective date of this Order, shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).
- f. Permittees subject to the Middle Santa Ana River Watershed Bacteria Indicator TMDL shall submit a Comprehensive Bacteria Reduction Plan (CBRP) for dry weather to the Regional Water Board Executive Officer no later than nine months after the effective date of this Order. The CBRP shall describe, in detail, the specific actions that have been taken or will be taken to achieve compliance with the dry weather water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Watershed Bacteria Indicator TMDL by December 31, 2015. The CBRP shall also establish a schedule for developing a CBRP to comply with the water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Bacteria Indicator TMDL during wet weather by December 31, 2025. The CBRP may be developed in lieu of the Watershed Management Program for MS4 discharges of bacteria within the Middle Santa Ana River Watershed.

## **5. Program Development**

### **a. Identification of Water Quality Priorities**

Permittees shall identify the water quality priorities within each WMA that will be addressed by the Watershed Management Program. At a minimum, these priorities shall include achieving applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs, as set forth in Part VI.E and Attachments L through R of this Order.

- i. **Water Quality Characterization.** Each plan shall include an evaluation of existing water quality conditions, including characterization of storm water and non-storm water discharges from the MS4 and receiving water quality,

to support identification and prioritization/sequencing of management actions.

ii. **Water Body-Pollutant Classification.** On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations shall be classified into one of the following three categories:

- (1) **Category 1 (Highest Priority):** Water body-pollutant combinations for which water quality-based effluent limitations and/or receiving water limitations are established in Part VI.E and Attachments L through R of this Order.
- (2) **Category 2 (High Priority):** Pollutants for which data indicate water quality impairment in the receiving water according to the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) and for which MS4 discharges may be causing or contributing to the impairment.
- (3) **Category 3 (Medium Priority):** Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance.

iii. **Source Assessment.** Utilizing existing information, potential sources within the watershed for the water body-pollutant combinations in Categories 1 - 3 shall be identified.

- (1) Permittees shall identify known and suspected storm water and non-storm water pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the water quality priorities. The identification of known and suspected sources of the highest water quality priorities shall consider the following:
  - (a) Review of available data, including but not limited to:
    - (i) Findings from the Permittees' Illicit Connections and Illicit Discharge Elimination Programs;
    - (ii) Findings from the Permittees' Industrial/Commercial Facilities Programs;
    - (iii) Findings from the Permittees' Development Construction Programs;

- (iv) Findings from the Permittees' Public Agency Activities Programs;
  - (v) TMDL source investigations;
  - (vi) Watershed model results;
  - (vii) Findings from the Permittees' monitoring programs, including but not limited to TMDL compliance monitoring and receiving water monitoring; and
  - (viii) Any other pertinent data, information, or studies related to pollutant sources and conditions that contribute to the highest water quality priorities.
- (b) Locations of the Permittees' MS4s, including, at a minimum, all MS4 major outfalls and major structural controls for storm water and non-storm water that discharge to receiving waters.
  - (c) Other known and suspected sources of pollutants in non-storm water or storm water discharges from the MS4 to receiving waters within the WMA.
- iv. Prioritization.** Based on the findings of the source assessment, the issues within each watershed shall be prioritized and sequenced. Watershed priorities shall include at a minimum:
- (1) TMDLs
    - (a) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term, or TMDL compliance deadlines that have already passed and limitations have not been achieved.
    - (b) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines between September 6, 2012 and October 25, 2017.
  - (2) Other Receiving Water Considerations
    - (a) Controlling pollutants for which data indicate impairment or exceedances of receiving water limitations in the receiving water and the findings from the source assessment implicates discharges from the MS4 shall be considered the second highest priority.

**b. Selection of Watershed Control Measures**

- i. Permittees shall identify strategies, control measures, and BMPs to implement through their individual storm water management programs, and collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities.
- ii. The objectives of the Watershed Control Measures shall include:
  - (1) Prevent or eliminate non-storm water discharges to the MS4 that are a source of pollutants from the MS4 to receiving waters.
  - (2) Implement pollutant controls necessary to achieve all applicable interim and final water quality-based effluent limitations and/or receiving water limitations pursuant to corresponding compliance schedules.
  - (3) Ensure that discharges from the MS4 do not cause or contribute to exceedances of receiving water limitations.
- iii. Watershed Control Measures may include:
  - (1) Structural and/or non-structural controls and operation and maintenance procedures that are designed to achieve applicable water quality-based effluent limitations, receiving water limitations in Part VI.E and/or Attachments L through R;
  - (2) Retrofitting areas of existing development known or suspected to contribute to the highest water quality priorities with regional or sub-regional controls or management measures; and
  - (3) Stream and/or habitat rehabilitation or restoration projects where stream and/or habitat rehabilitation or restoration are necessary for, or will contribute to demonstrable improvements in the physical, chemical, and biological receiving water conditions and restoration and/or protection of water quality standards in receiving waters.
- iv. The following provisions of this Order shall be incorporated as part of the Watershed Management Program:
  - (1) Minimum Control Measures.
    - (a) Permittees shall assess the minimum control measures (MCMs) as defined in Part VI.D.4 to Part VI.D.10 of this Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the following minimum control measures, Permittees shall identify potential modifications that will address watershed priorities:
      - (i) Development Construction Program

- (ii) Industrial/Commercial Facilities Program
  - (iii) Illicit Connection and Illicit Discharges Detection and Elimination Program
  - (iv) Public Agency Activities Program
  - (v) Public Information and Participation Program
- (b) At a minimum, the Watershed Management Program shall include management programs consistent with 40 CFR section 122.26(d)(2)(iv)(A)-(D).
- (c) If the Permittee(s) elects to eliminate a control measure identified in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 because that specific control measure is not applicable to the Permittee(s), the Permittee(s) shall provide a justification for its elimination. The Planning and Land Development Program is not eligible for elimination.
- (d) Such customized actions, once approved as part of the Watershed Management Program, shall replace in part or in whole the requirements in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 for participating Permittees.
- (2) **Non-Storm Water Discharge Measures.** Where Permittees identify non-storm water discharges from the MS4 as a source of pollutants that cause or contribute to exceedance of receiving water limitations, the Watershed Control Measures shall include strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants consistent with Parts III.A and VI.D.10. These may include measures to prohibit the non-storm water discharge to the MS4, additional BMPs to reduce pollutants in the non-storm water discharge or conveyed by the non-storm water discharge, diversion to a sanitary sewer for treatment, or strategies to require the non-storm water discharge to be separately regulated under a general NPDES permit.
- (3) **TMDL Control Measures.** Permittees shall compile control measures that have been identified in TMDLs and corresponding implementation plans. Permittees shall identify those control measures to be modified, if any, to most effectively address TMDL requirements within the watershed. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., USEPA established TMDLs), the Permittees shall evaluate and identify control measures to achieve water quality-based effluent limitations and/or receiving water limitations established in this Order pursuant to these TMDLs.

- (a) TMDL control measures shall include where necessary control measures to address both storm water and non-storm water discharges from the MS4.
  - (b) TMDL control measures may include baseline or customized activities covered under the general MCM categories in Part VI.D as well as BMPs and other control measures covered under the non-storm water discharge provisions of Part III.A of this Order.
  - (c) The WMP shall include, at a minimum, those actions that will be implemented during the permit term to achieve interim and/or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines within the permit term.
- (4) Each plan shall include the following components:
- (a) Identification of specific structural controls and non-structural best management practices, including operational source control and pollution prevention, and any other actions or programs to achieve all water quality-based effluent limitations and receiving water limitations contained in this Part VI.E and Attachments L through R to which the Permittee(s) is subject;
  - (b) For each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation;
  - (c) For any pollution prevention measures, the nature, scope, and timing of implementation;
  - (d) For each structural control and non-structural best management practice, interim milestones and dates for achievement to ensure that TMDL compliance deadlines will be met; and
  - (e) The plan shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures.
- (5) Permittees shall conduct a Reasonable Assurance Analysis for each water body-pollutant combination addressed by the Watershed Management Program. A Reasonable Assurance Analysis (RAA) shall be quantitative and performed using a peer-reviewed model in the public domain. Models to be considered for the RAA, without exclusion, are the Watershed Management Modeling System (WMMS), Hydrologic Simulation Program-FORTRAN (HSPF), and the Structural BMP Prioritization and Analysis Tool (SBPAT). The RAA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis. Data on

performance of watershed control measures needed as model input shall be drawn only from peer-reviewed sources. These data shall be statistically analyzed to determine the best estimate of performance and the confidence limits on that estimate for the pollutants to be evaluated. The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.

- (a) Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R with compliance deadlines during the permit term.
  - (b) Where the TMDL Provisions in Part VI.E and Attachments L through R do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.
  - (c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve applicable receiving water limitations as soon as possible.
- (6) Permittees shall provide documentation that they have the necessary legal authority to implement the Watershed Control Measures identified in the plan, or that other legal authority exists to compel implementation of the Watershed Control Measures.

**c. Compliance Schedules**

Permittees shall incorporate compliance schedules in Attachments L through R into the plan and, where necessary develop interim milestones and dates for their achievement. Compliance schedules and interim milestones and dates for their achievement shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality-based effluent limitations and/or receiving water limitations.

- i. Schedules must be adequate for measuring progress on a watershed scale once every two years.



ii. Schedules must be developed for both the strategies, control measures and BMPs implemented by each Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale.

iii. Schedules shall incorporate the following:

- (1) Compliance deadlines occurring within the permit term for all applicable interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R of this Order,
- (2) Interim milestones and dates for their achievement within the permit term for any applicable final water quality-based effluent limitation and/or receiving water limitation in Part VI.E and Attachments L through R, where deadlines within the permit term are not otherwise specified.
- (3) For watershed priorities related to addressing exceedances of receiving water limitations in Part V.A and not otherwise addressed by Part VI.E:
  - (a) Milestones based on measureable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,
  - (a) A schedule with dates for achieving the milestones, and
  - (b) A final date for achieving the receiving water limitations as soon as possible.
  - (c) The milestones and implementation schedule in (a)-(c) fulfill the requirements in Part V.A.3.a to prepare an Integrated Monitoring Compliance Report.

## **6. Watershed Management Program Implementation**

Each Permittee shall begin implementing the Watershed Management Program or EWMP immediately upon approval of the plan by the Regional Water Board or the Executive Officer on behalf of the Regional Water Board.

- a. Permittees may request an extension of deadlines for achievement of interim milestones established pursuant to Part VI.C.4.c.iii.(3) only. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions shall be subject to approval by the Regional Water Board Executive Officer.

## **7. Integrated Watershed Monitoring and Assessment**

Permittees in each WMA shall develop an integrated monitoring program as set forth in Part IV of the MRP (Attachment E) or implement a customized monitoring

program with the primary objective of allowing for the customization of the outfall monitoring program (Parts VIII and IX) in conjunction with an approved Watershed Management Program or EWMP, as defined below. Each monitoring program shall assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the water quality priorities for each WMA. The customized monitoring program shall be submitted as part of the Watershed Management Program, or where Permittees elect to develop an EWMP, shall be submitted within 18 months of the effective date of this Order. If pursuing a customized monitoring program, the Permittee(s) shall provide sufficient justification for each element of the program that differs from the monitoring program requirements as set forth in Attachment E. Monitoring programs shall be subject to approval by the Executive Officer following a public comment period. The customized monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:

- Receiving Water Monitoring
- Storm Water Outfall Monitoring
- Non-Storm Water Outfall Monitoring
- New Development/Re-Development Effectiveness Tracking
- Regional Studies

## **8. Adaptive Management Process**

### **a. Watershed Management Program Adaptive Management Process**

- i. Permittees in each WMA shall implement an adaptive management process, every two years from the date of program approval, adapting the Watershed Management Program or EWMP to become more effective, based on, but not limited to a consideration of the following:
  - (1) Progress toward achieving interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R, according to established compliance schedules;
  - (2) Progress toward achieving improved water quality in MS4 discharges and achieving receiving water limitations through implementation of the watershed control measures based on an evaluation of outfall-based monitoring data and receiving water monitoring data;
  - (3) Achievement of interim milestones;

- (4) Re-evaluation of the water quality priorities identified for the WMA based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
  - (5) Availability of new information and data from sources other than the Permittees' monitoring program(s) within the WMA that informs the effectiveness of the actions implemented by the Permittees;
  - (6) Regional Water Board recommendations; and
  - (7) Recommendations for modifications to the Watershed Management Program solicited through a public participation process.
- ii. Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.
- (1) The adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.
- iii. Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.

## **D. Storm Water Management Program Minimum Control Measures**

### **1. General Requirements**

- a. Each Permittee shall implement the requirements in Parts VI.D.4 through VI.D.10 below, or may in lieu of the requirements in Parts VI.D.4 through VI.D.10 implement customized actions within each of these general categories of control measures as set forth in an approved Watershed Management Program per Part VI.C. Implementation shall be consistent with the requirements of 40 CFR § 122.26(d)(2)(iv).
- b. Timelines for Implementation
  - i. Unless otherwise noted in Part VI.D, each Permittee that does not elect to develop a Watershed Management Program or EWMP per Part VI.C shall implement the requirements contained in Part VI.D within 6 months after the

effective date of this Order. In the interim, a Permittee shall continue to implement its existing storm water management program, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv).

- ii. Permittees that elect to develop a Watershed Management Program or EWMP shall continue to implement their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv) until the Watershed Management Program or EWMP is approved by the Regional Water Board Executive Officer.

## **2. Progressive Enforcement and Interagency Coordination**

- a. Each Permittee shall develop and implement a Progressive Enforcement Policy to ensure that (1) regulated Industrial/Commercial facilities, (2) construction sites, (3) development and redevelopment sites with post-construction controls, and (4) illicit discharges are each brought into compliance with all storm water and non-storm water requirements within a reasonable time period as specified below.

- i. **Follow-up Inspections**

In the event that a Permittee determines, based on an inspection or illicit discharge investigation conducted, that a facility or site operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement actions which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection and/or investigation.

- ii. **Enforcement Action**

In the event that a Permittee determines that a facility or site operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take enforcement action as established through authority in its municipal code and ordinances, through the judicial system, or refer the case to the Regional Water Board, per the Interagency Coordination provisions below.

- iii. **Records Retention**

Each Permittee shall maintain records, per their existing record retention policies, and make them available on request to the Regional Water Board, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

- iv. **Referral of Violations of Municipal Ordinances and California Water Code § 13260**

A Permittee may refer a violation(s) of its municipal storm water ordinances and/or California Water Code section 13260 by Industrial and Commercial facilities and construction site operators to the Regional Water Board

provided that the Permittee has made a good faith effort of applying its Progressive Enforcement Policy to achieve compliance with its own ordinances. At a minimum, a Permittee's good faith effort must be documented with:

- (1) Two follow-up inspections, and
- (2) Two warning letters or notices of violation.

**v. Referral of Violations of the Industrial and Construction General Permits, including Requirements to File a Notice of Intent or No Exposure Certification**

For those facilities or site operators in violation of municipal storm water ordinances and subject to the Industrial and/or Construction General Permits, Permittees may escalate referral of such violations to the Regional Water Board (promptly via telephone or electronically) after one inspection and one written notice of violation (copied to the Regional Water Board) to the facility or site operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- (1) Name of the facility or site,
- (2) Operator of the facility or site,
- (3) Owner of the facility or site,
- (4) WDID Number (if applicable),
- (5) Records of communication with the facility/site operator regarding the violation, which shall include at least one inspection report,
- (6) The written notice of violation (copied to the Regional Water Board),
- (7) For industrial sites, the industrial activity being conducted at the facility that is subject to the Industrial General Permit, and
- (8) For construction sites, site acreage and Risk Factor rating.

**b. Investigation of Complaints Transmitted by the Regional Water Board Staff**

Each Permittee shall initiate, within one business day,<sup>22</sup> investigation of complaints from facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm validity of the complaint and to determine if the facility is in compliance with municipal storm water ordinances and, if necessary, to oversee corrective action.

**c. Assistance with Regional Water Board Enforcement Actions**

As directed by the Regional Water Board Executive Officer, Permittees shall assist Regional Water Board enforcement actions by:

- i. Assisting in identification of current owners, operators, and lessees of properties and sites.

---

<sup>22</sup> Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within that one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, to occur within four business days.

- ii. Providing staff, when available, for joint inspections with Regional Water Board inspectors.
- iii. Appearing to testify as witnesses in Regional Water Board enforcement hearings.
- iv. Providing copies of inspection reports and documentation demonstrating application of its Progressive Enforcement Policy.

### **3. Modifications/Revisions**

- a. Each Permittee shall modify its storm water management programs, protocols, practices, and municipal codes to make them consistent with the requirements in this Order.

### **4. Requirements Applicable to the Los Angeles County Flood Control District**

#### **a. Public Information and Participation Program (PIPP)**

##### **i. General**

- (1) The LACFCD shall participate in a regional Public Information and Participation Program (PIPP) or alternatively, shall implement its own PIPP that includes the requirements listed in this part. The LACFCD shall collaborate, as necessary, with other Permittees to implement PIPP requirements. The objectives of the PIPP are as follows:
  - (a) To measurably increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts.
  - (b) To measurably change the waste disposal and storm water pollution generation behavior of target audiences by encouraging the implementation of appropriate alternatives by providing information to the public.
  - (c) To involve and engage a diversity of socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of stormwater pollution.

##### **ii. PIPP Implementation**

- (1) The LACFCD shall implement the PIPP requirements listed in this Part VI.D.5 using one or more of the following approaches:
  - (a) By participating in a collaborative PIPP covering the entire service area of the Los Angeles County Flood Control District,
  - (b) By participating in one or more Watershed Group sponsored PIPPs, and/or
  - (c) Individually within the service area of the Los Angeles County Flood Control District.

- (2) If the LACFCD participates in a collaborative District-wide or Watershed Group PIPP, the LACFCD shall provide the contact information for their appropriate staff responsible for storm water public education activities to the designated PIPP coordinator and contact information changes no later than 30 days after a change occurs.

### **iii. Public Participation**

- (1) The LACFCD, in collaboration with the County of Los Angeles, shall continue to maintain the countywide hotline (888-CLEAN-LA) for public reporting of clogged catch basin inlets and illicit discharges/dumping, faded or missing catch basin labels, and general storm water management information.
  - (a) The LACFCD shall include the reporting information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published.
  - (b) The LACFCD, in collaboration with the County of Los Angeles, shall continue to maintain the [www.888cleanla.com](http://www.888cleanla.com) website.

### **iv. Residential Outreach Program**

- (1) Working in conjunction with a District-wide or Watershed Group sponsored PIPP or individually, the LACFCD shall implement the following activities:
  - (a) Conduct storm water pollution prevention public service announcements and advertising campaigns
  - (b) Facilitate the dissemination of public education materials including, at a minimum, information on the proper handling (i.e., disposal, storage and/or use) of:
    - ( ) Vehicle waste fluids
    - (i) Household waste materials (i.e., trash and household hazardous waste)
    - (ii) Construction waste materials
    - (iii) Pesticides and fertilizers (including integrated pest management practices [IPM] to promote reduced use of pesticides),
    - (iv) Green waste (including lawn clippings and leaves)
    - (v) Animal wastes
  - (c) Facilitate the dissemination of activity-specific storm water pollution prevention public education materials, at a minimum, for the following points of purchase:
    - (i) Automotive parts stores

- (ii) Home improvement centers / lumber yards / hardware stores / paint stores
- (iii) Landscaping / gardening centers
- (iv) Pet shops / feed stores
- (d) Maintain a storm water website, which shall include educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities listed in Part VI.D.5.
- (e) When implementing activities in (a)-(d), the LACFCD shall use effective strategies to educate and involve ethnic communities in storm water pollution prevention through culturally effective methods.

**b. Industrial/Commercial Facilities Program**

If the LACFCD operates, or has authority over, any facility(ies) identified in Part VI.D.6.b, LACFCD shall comply with the requirements in Part VI.D.6 for those facilities.

**c. Public Agency Activities Program**

**i. General**

- (1) The LACFCD shall implement a Public Agency Activities Program to minimize storm water pollution impacts from LACFCD-owned or operated facilities and activities. Requirements for Public Agency Facilities and Activities consist of the following components:
  - (a) Public Construction Activities Management.
  - (b) Public Facility Inventory
  - (c) Public Facility and Activity Management
  - (d) Vehicle and Equipment Washing
  - (e) Landscape and Recreational Facilities Management
  - (f) Storm Drain Operation and Maintenance
  - (g) Parking Facilities Management
  - (h) Emergency Procedures
  - (i) Employee and Contractor Training



## **ii. Public Construction Activities Management**

- (1) The LACFCD shall implement and comply with the Planning and Land Development Program requirements in Part VI.D.7 of this Order at LACFCD-owned or operated public construction projects that are categorized under the project types identified in Part VI.D.7 of this Order.
- (2) The LACFCD shall implement and comply with the appropriate Development Construction Program requirements in Part VI.D.8 of this Order at LACFCD-owned or operated construction projects as applicable.
- (3) For LACFCD-owned or operated projects that disturb less than one acre of soil, the LACFCD shall require the implementation of an effective combination of erosion and sediment control BMPs from Table 13 (see Construction Development Program).
- (4) The LACFCD shall obtain separate coverage under the Construction General Permit for all LACFCD-owned or operated construction sites that require coverage.

## **iii. Public Facility Inventory**

- (1) The LACFCD shall maintain an updated watershed-based inventory and map of all LACFCD-owned or operated facilities that are potential sources of storm water pollution. The incorporation of facility information into a GIS is recommended. Sources to be tracked include but are not limited to the following:
  - (a) Chemical storage facilities
  - (b) Equipment storage and maintenance facilities (including landscape maintenance-related operations)
  - (c) Fueling or fuel storage facilities
  - (d) Materials storage yards
  - (e) Pesticide storage facilities
  - (f) LACFCD buildings
  - (g) LACFCD vehicle storage and maintenance yards
  - (h) All other LACFCD-owned or operated facilities or activities that the LACFCD determines may contribute a substantial pollutant load to the MS4.
- (2) The LACFCD shall include the following minimum fields of information for each LACFCD-owned or operated facility in its watershed-based inventory and map.
  - (a) Name of facility
  - (b) Name of facility manager and contact information

- (c) Address of facility (physical and mailing)
  - (d) A narrative description of activities performed and principal products used at each facility and status of exposure to storm water.
  - (e) Coverage under the Industrial General Permit or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.
- (3) The LACFCD shall update its inventory and map once during the Permit term. The update shall be accomplished through a collection of new information obtained through field activities.

#### **iv. Public Agency Facility and Activity Management**

- (1) The LACFCD shall obtain separate coverage under the Industrial General Permit for all LACFCD-owned or operated facilities where industrial activities are conducted that require coverage under the Industrial General Permit.
- (2) The LACFCD shall implement the following measures for flood management projects:
  - (a) Develop procedures to assess the impacts of flood management projects on the water quality of receiving waterbodies; and
  - (b) Evaluate existing structural flood control facilities during the planning phases of major maintenance or rehabilitation projects to determine if retrofitting the facility to provide additional pollutant removal from storm water is feasible.

- (3) The LACFCD shall implement and maintain the general and activity-specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs when such activities occur at LACFCD-owned or operated facilities and field activities (e.g., project sites) including but not limited to the facility types listed in Part VI.D.9.c above, and at any area that includes the activities described in Table 18, or that have the potential to discharge pollutants in storm water.
- (4) Any contractors hired by the LACFCD to conduct Public Agency Activities shall be contractually required to implement and maintain the general and activity specific BMPs listed in Table 18 or an equivalent set of BMPs. The LACFCD shall conduct oversight of contractor activities to ensure these BMPs are implemented and maintained.
- (5) Effective source control BMPs for the activities listed in Table 18 shall be implemented at LACFCD-owned or operated facilities, unless the pollutant generating activity does not occur. The LACFCD shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA, see Attachment A for definition), a water body subject to TMDL Provisions in Part VI.E, or a CWA section 303(d) listed water body (see Part VI.E below). Likewise, for those BMPs that are not adequately protective of water quality standards, the LACFCD shall implement additional site-specific controls.

**v. Vehicle and Equipment Washing**

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs for all fixed vehicle and equipment washing areas;
- (2) The LACFCD shall prevent discharges of wash waters from vehicle and equipment washing to the MS4 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
  - (a) Self-contain, and haul off for disposal; or
  - (b) Equip with a clarifier or an alternative pre-treatment device and plumb to the sanitary sewer in accordance with applicable waste water provider regulations

- (3) The LACFCD shall ensure that any LACFCD facilities constructed, redeveloped, or replaced shall not discharge wastewater from vehicle and equipment wash areas to the MS4 by plumbing all areas to the sanitary sewer in accordance with applicable waste water provider regulations, or self-containing all waste water/ wash water and hauling to a point of legal disposal.

#### **vi. Landscape and Recreational Facilities Management**

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs for all its public right-of-ways, flood control facilities and open channels and reservoirs, and landscape and recreational facilities and activities.
- (2) The LACFCD shall implement an IPM program that includes the following:
  - (a) Pesticides are used only if monitoring indicates they are needed, and pesticides are applied according to applicable permits and established guidelines.
  - (b) Treatments are made with the goal of removing only the target organism.
  - (c) Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial non-target organisms, and the environment.
  - (d) The use of pesticides, including Organophosphates and Pyrethroids, does not threaten water quality.
  - (e) Partner, as appropriate, with other agencies and organizations to encourage the use of IPM.
  - (f) Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) for Public Agency Facilities and Activities.
  - (g) Policies, procedures, and ordinances shall include a schedule to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
    - (i) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
    - (ii) Quantify pesticide use by staff and hired contractors.
    - (iii) Demonstrate implementation of IPM alternatives where feasible to reduce pesticide use.

- (3) The LACFCD shall implement the following requirements:
- (a) Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergents), and fertilizers.
  - (b) Ensure there is no application of pesticides or fertilizers (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA, (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides or pesticides which require water for activation.
  - (c) Ensure that no banned or unregistered pesticides are stored or applied.
  - (d) Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation, or are under the direct supervision of a pesticide applicator certified in the appropriate category.
  - (e) Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
  - (f) Store pesticides and fertilizers indoors or under cover on paved surfaces, or use secondary containment.
    - (i) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
    - (ii) Regularly inspect storage areas.

#### **vii. Storm Drain Operation and Management**

- (1) The LACFCD shall implement and maintain the activity specific BMPs listed in Table 18 or equivalent set of BMPs for storm drain operation and maintenance.
- (2) Ensure that all the material removed from the MS4 does not reenter the system. Solid material shall be dewatered in a contained area and liquid material shall be disposed in accordance with any of the following measures:
  - (a) Self-contain, and haul off for legal disposal; or
  - (b) Equip with a clarifier or an alternative pre-treatment device; and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.
- (3) Catch Basin Cleaning
  - (a) In areas that are not subject to a trash TMDL, the LACFCD shall determine priority areas and shall update its map or list of catch basins with their GPS coordinates and priority:

**Priority A:** Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

**Priority B:** Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

**Priority C:** Catch basins that are designated as generating low volumes of trash and/or debris.

The map or list shall contain the rationale or data to support priority designations.

- (b) In areas not subject to a trash TMDL, the LACFCD shall inspect its catch basins according to the following schedule:

**Priority A:** A minimum of 3 times during the wet season (October 1 through April 15) and once during the dry season every year.

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

**Priority C:** A minimum of once per year.

Catch basins shall be cleaned as necessary on the basis of inspections. At a minimum, LACFCD shall ensure that any catch basin that is determined to be at least 25% full of trash shall be cleaned out. LACFCD shall maintain inspection and cleaning records for Regional Water Board review.

- (c) In areas that are subject to a trash TMDL, the subject Permittees shall implement the applicable provisions in Part VI.E.

(4) **Catch Basin Labels and Open Channel Signage**

- (a) LACFCD shall label all catch basin inlets that they own with a legible "no dumping" message.
- (b) The LACFCD shall inspect the legibility of the catch basin stencil or label nearest the inlet prior to the wet season every year.
- (c) The LACFCD shall record all catch basins with illegible stencils and re-stencil or re-label within 180 days of inspection.
- (d) The LACFCD shall post signs, referencing local code(s) that prohibit littering and illegal dumping, at designated public access points to open channels, creeks, urban lakes, and other relevant waterbodies.

(5) **Open Channel Maintenance**

The LACFCD shall implement a program for Open Channel Maintenance that includes the following:

- (a) Visual monitoring of LACFCD owned open channels and other drainage structures for trash and debris at least annually;
  - (b) Removal of trash and debris from open channels a minimum of once per year before the wet season;
  - (c) Elimination of the discharge of contaminants produced by storm drain maintenance and clean outs; and
  - (d) Proper disposal of debris and trash removed during open channel maintenance.
- (6) Infiltration from Sanitary Sewer to MS4/Preventive Maintenance
- (a) The LACFCD shall implement controls and measures to prevent and eliminate infiltration of seepage from sanitary sewers to its MS4 through routine preventive maintenance of its MS4.
  - (b) The LACFCD shall implement controls to limit infiltration of seepage from sanitary sewers to its MS4 where necessary. Such controls must include:
    - (i) Adequate plan checking for construction and new development;
    - (ii) Incident response training for its employees that identify sanitary sewer spills;
    - (iii) Code enforcement inspections;
    - (iv) MS4 maintenance and inspections;
    - (v) Interagency coordination with sewer agencies; and
    - (vi) Proper education of its staff and contractors conducting field operations on its MS4.
- (7) LACFCD-Owned Treatment Control BMPs
- (a) The LACFCD shall implement an inspection and maintenance program for all LACFCD-owned treatment control BMPs, including post-construction treatment control BMPs.
  - (b) The LACFCD shall ensure proper operation of all its treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.
  - (c) Any residual water produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:
    - (i) Hauled away and legally disposed of; or
    - (ii) Applied to the land without runoff; or
    - (iii) Discharged to the sanitary sewer system (with permits or authorization); or

- (iv) Treated or filtered to remove bacteria, sediments, nutrients, and meet the limitations set in Table 19 (Discharge Limitations for Dewatering Treatment BMPs), prior to discharge to the MS4.

#### **viii. Parking Facilities Management**

LACFCD-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a LACFCD-owned parking lot be cleaned less than once a month.

#### **ix. Emergency Procedures**

The LACFCD may conduct repairs and rehabilitation of essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order as follows:

- (1) The LACFCD shall abide by all other regulatory requirements, including notification to other agencies as appropriate.
- (2) Where the self-waiver has been invoked, the LACFCD shall notify the Regional Water Board Executive Officer of the occurrence of the emergency no later than 30 business days after the situation of emergency has passed.
- (3) Minor repairs of essential public service systems and infrastructure in emergency situations (that can be completed in less than one week) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

#### **x. Employee and Contractor Training**

- (1) The LACFCD shall, no later than one year after Order adoption and annually thereafter before June 30, train all of their employees and contractors in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program to:
  - (a) Promote a clear understanding of the potential for activities to pollute storm water.
  - (b) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.



- (2) The LACFCD shall, no later than one year after Order adoption and annually thereafter before June 30, train all of their employees and contractors who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Outside contractors can self-certify, providing they certify they have received all applicable training required in the Order and have documentation to that effect. Training programs shall address:
  - (a) The potential for pesticide-related surface water toxicity.
  - (b) Proper use, handling, and disposal of pesticides.
  - (c) Least toxic methods of pest prevention and control, including IPM.
  - (d) Reduction of pesticide use.
- (3) The LACFCD shall require appropriate training of contractor employees in targeted positions as described above.

#### **d. Illicit Connections and Illicit Discharge Elimination Program**

##### **i. General**

- (1) The LACFCD shall continue to implement an Illicit Connection and Illicit Discharge (IC/ID) Program to detect, investigate, and eliminate IC/IDs to its MS4. The IC/ID Program must be implemented in accordance with the requirements and performance measures specified in the following subsections.
- (2) As stated in Part VI.A.2 of this Order, each Permittee must have adequate legal authority to prohibit IC/IDs to the MS4 and enable enforcement capabilities to eliminate the source of IC/IDs.
- (3) The LACFCD's IC/ID Program shall consist of at least the following major program components:
  - (a) An up-to-date map of LACFCD's MS4
  - (b) Procedures for conducting source investigations for IC/IDs
  - (c) Procedures for eliminating the source of IC/IDs
  - (d) Procedures for public reporting of illicit discharges
  - (e) Spill response plan
  - (f) IC/IDs education and training for LACFCD staff

## **ii. MS4 Mapping**

- (1) The LACFCD shall maintain an up-to-date and accurate electronic map of its MS4. If possible, the map should be maintained within a GIS. The map must show the following, at a minimum:
  - (a) Within one year of Permit adoption, the location of outfalls owned and maintained by the LACFCD. Each outfall shall be given an alphanumeric identifier, which must be noted on the map. Each mapped outfall shall be located using a geographic positioning system (GPS). Photographs of the major outfalls shall be taken to provide baseline information to track operation and maintenance needs over time.
  - (b) The location and length of open channels and underground storm drain pipes with a diameter of 36 inches or greater that are owned and operated by the LACFCD.
  - (c) The location and name of all waterbodies receiving discharges from those MS4 major outfalls identified in (a).
  - (d) All LACFCD's dry weather diversions installed within the MS4 to direct flows from the MS4 to the sanitary sewer system, including the owner and operator of each diversion.
  - (e) By the end of the Permit term, map all known permitted and documented connections to its MS4 system.
- (2) The MS4 map shall be updated as necessary.

## **iii. Illicit Discharge Source Investigation and Elimination**

- (1) The LACFCD shall develop written procedures for conducting investigations to prioritize and identify the source of all illicit discharges to its MS4, including procedures to eliminate the discharge once the source is located.
- (2) At a minimum, the LACFCD shall initiate<sup>23</sup> an investigation(s) to identify and locate the source within one business day of becoming aware of the illicit discharge.
- (3) When conducting investigations, the LACFCD shall comply with the following:
  - (a) Illicit discharges suspected of being sanitary sewage and/or significantly contaminated shall be investigated first.
  - (b) The LACFCD shall track all investigations to document, at a minimum, the date(s) the illicit discharge was observed; the results

---

<sup>23</sup> Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, occur within two business days of becoming aware of the illicit discharge.

- of the investigation; any follow-up of the investigation; and the date the investigation was closed.
- (c) The LACFCD shall prioritize and investigate the source of all observed illicit discharges to its MS4.
  - (d) If the source of the illicit discharge is found to be a discharge authorized under an NPDES permit, the LACFCD shall document the source and report to the Regional Water Board within 30 days of determination. No further action is required.
  - (e) If the source of the illicit discharge has been determined to originate from within the jurisdiction of other Permittee(s) with land use authority over the suspected responsible party/parties, the LACFCD shall immediately alert the appropriate Permittee(s) of the problem for further action by the Permittee(s).
- (4) When taking corrective action to eliminate illicit discharges, the LACFCD shall comply with the following:
- (a) If the source of the illicit discharge has been determined or suspected by the LACFCD to originate within an upstream jurisdiction(s), the LACFCD shall immediately notify the upstream jurisdiction(s), and notify the Regional Water Board within 30 days of such determination and provide all the information collected and efforts taken.
  - (b) Once the Permittee with land use authority over the suspected responsible party/parties has been alerted, the LACFCD may continue to work in cooperation with the Permittee(s) to notify the responsible party/parties of the problem, and require the responsible party/parties to immediately initiate necessary corrective actions to eliminate the illicit discharge. Upon being notified that the discharge has been eliminated, the LACFCD may, in conjunction with the Permittee(s) conduct a follow-up investigation to verify that the discharge has been eliminated and cleaned up to the satisfaction of the LACFCD. The LACFCD shall document its follow-up investigation. The LACFCD may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection and investigation activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy.
  - (c) If the source of the illicit discharge cannot be traced to a suspected responsible party, the LACFCD, in conjunction with other affected Permittees, shall continue implementing the illicit discharge/spill response plan.

- (5) In the event the LACFCD and/or other Permittees are unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, including the inability to find the responsible party/parties, or other circumstances prevent the full elimination of an ongoing illicit discharge, the LACFCD and/or other Permittees shall notify the Regional Water Board within 30 days of such determination and provide available information to the Regional Water Board.

#### **iv. Identification and Response to Illicit Connections**

- (1) Investigation

The LACFCD, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days, to determine the following: (1) source of the connection, (2) nature and volume of discharge through the connection, and (3) responsible party for the connection.

- (2) Elimination

The LACFCD, upon confirmation of an illicit connection to its MS4, shall ensure that the connection is:

- (a) Permitted or documented, provided the connection will only discharge storm water and non-storm water allowable under this Order or other individual or general NPDES Permits/WDRs, or
- (b) Eliminated within 180 days of completion of the investigation, using its formal enforcement authority, if necessary, to eliminate the illicit connection.

- (3) Documentation

Formal records must be maintained for all illicit connection investigations and the formal enforcement taken to eliminate illicit connections.

**v. Public Reporting of Non-Stormwater Discharges and Spills**

- (1) The LACFCD shall, in collaboration with the County, continue to maintain the 888-CLEAN-LA hotline and corresponding internet site at [www.888cleanla.org](http://www.888cleanla.org) to promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s.
- (2) The LACFCD shall include information regarding public reporting of illicit discharges or improper disposal on the signage adjacent to open channels as required in Part VI.D.9.h.vi.(4).
- (3) The LACFCD shall develop and maintain written procedures that document how complaint calls and internet submissions are received, documented, and tracked to ensure that all complaints are adequately addressed. 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 LACFCD. Any identified changes shall be made to the procedures subsequent to the annual evaluation.
- (4) The LACFCD shall maintain documentation of the complaint calls and internet submissions and record the location of the reported spill or IC/ID and the actions undertaken, including referrals to other agencies, in response to all IC/ID complaints.

**vi. Illicit Discharge and Spill Response Plan**

- (1) The LACFCD shall implement an ID and spill response plan for all spills that may discharge into its system. The ID and spill response plan shall clearly identify agencies responsible for ID and spill response and cleanup, contact information, and shall contain at a minimum the following requirements:
  - (a) Coordination with spill response teams throughout all appropriate departments, programs and agencies so that maximum water quality protection is provided.
  - (b) Initiation of investigation of all public and employee ID and spill complaints within one business day of receiving the complaint to assess validity.
  - (c) Response to ID and spills within 4 hours of becoming aware of the ID or spill, except where such IDs or spills occur on private property, in which case the response should be within 2 hours of gaining legal access to the property.
  - (d) IDs or spills that may endanger health or the environment shall be reported to appropriate public health agencies and the Office of Emergency Services (OES).

## **vii. Illicit Connection and Illicit Discharge Education and Training**

- (1) The LACFCD must continue to implement a training program regarding the identification of IC/IDs for all LACFCD field staff, who, as part of their normal job responsibilities (e.g., storm drain inspection and maintenance), may come into contact with or otherwise observe an illicit discharge or illicit connection to its MS4. Contact information, including the procedure for reporting an illicit discharge, must be included in the LACFCD's fleet vehicles that are used by field staff. Training program documents must be available for review by the Regional Water Board.
- (2) The LACFCD's training program should address, at a minimum, the following:
  - (a) IC/ID identification, including definitions and examples,
  - (b) investigation,
  - (c) elimination,
  - (d) cleanup,
  - (e) reporting, and
  - (f) documentation.
- (3) The LACFCD must create a list of applicable positions which require IC/ID training and ensure that training is provided at least twice during the term of this Order. The LACFCD must maintain documentation of the training activities.
- (4) New LACFCD staff members must be provided with IC/ID training within 180 days of starting employment.
- (5) The LACFCD shall require its contractors to train their employees in targeted positions as described above.

## **5. Public Information and Participation Program**

### **a. General**

- i. Each Permittee shall implement a Public Information and Participation Program (PIPP) that includes the requirements listed in this Part VI.D.5. Each Permittee shall be responsible for developing and implementing the PIPP and implementing specific PIPP requirements. The objectives of the PIPP are as follows:
  - (1) To measurably increase the knowledge of the target audiences about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts.
  - (2) To measurably change the waste disposal and storm water pollution generation behavior of target audiences by developing and encouraging the implementation of appropriate alternatives.

- (3) To involve and engage a diversity of socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

**b. PIPP Implementation**

- i. Each Permittee shall implement the PIPP requirements listed in this Part VI.D.4 using one or more of the following approaches:
  - (1) By participating in a County-wide PIPP,
  - (2) By participating in one or more Watershed Group sponsored PIPPs, and/or
  - (3) Or individually within its jurisdiction.
- ii. If a Permittee participates in a County-wide or Watershed Group PIPP, the Permittee shall provide the contact information for their appropriate staff responsible for storm water public education activities to the designated PIPP coordinator and contact information changes no later than 30 days after a change occurs.

**c. Public Participation**

- i. Each Permittee, whether participating in a County-wide or Watershed Group sponsored PIPP, or acting individually, shall provide a means for public reporting of clogged catch basin inlets and illicit discharges/dumping, faded or missing catch basin labels, and general storm water and non-storm water pollution prevention information.
  - (1) Permittees may elect to use the 888-CLEAN-LA hotline as the general public reporting contact or each Permittee or Watershed Group may establish its own hotline, if preferred.
  - (2) Each Permittee shall include the reporting information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published.
  - (3) Each Permittee shall identify staff or departments who will serve as the contact person(s) and shall make this information available on its website.
  - (4) Each Permittee is responsible for providing current, updated hotline contact information to the general public within its jurisdiction.
- ii. Organize events targeted to residents and population subgroups to educate and involve the community in storm water and non-storm water pollution prevention and clean-up (e.g., education seminars, clean-ups, and community catch basin stenciling).

**d. Residential Outreach Program**

- i. Working in conjunction with a County-wide or Watershed Group sponsored PIPP or individually, each Permittee shall implement the following activities:

- (1) Conduct storm water pollution prevention public service announcements and advertising campaigns
- (2) Public education materials shall include but are not limited to information on the proper handling (i.e., disposal, storage and/or use) of:
  - (a) Vehicle waste fluids
  - (b) Household waste materials (i.e., trash and household hazardous waste, including personal care products and pharmaceuticals)
  - (c) Construction waste materials
  - (d) Pesticides and fertilizers (including integrated pest management practices [IPM] to promote reduced use of pesticides)
  - (e) Green waste (including lawn clippings and leaves)
  - (f) Animal wastes
- (3) Distribute activity specific storm water pollution prevention public education materials at, but not limited to, the following points of purchase:
  - (a) Automotive parts stores
  - (b) Home improvement centers / lumber yards / hardware stores/paint stores
  - (c) Landscaping / gardening centers
  - (d) Pet shops / feed stores
- (4) Maintain storm water websites or provide links to storm water websites via the Permittee's website, which shall include educational material and opportunities for the public to participate in storm water pollution prevention and clean-up activities listed in Part VI.D.4.
- (5) Provide independent, parochial, and public schools within in each Permittee's jurisdiction with materials to educate school children (K-12) on storm water pollution. Material may include videos, live presentations, and other information. Permittees are encouraged to work with, or leverage, materials produced by other statewide agencies and associations such as the State Water Board's "Erase the Waste" educational program and the California Environmental Education Interagency Network (CEEIN) to implement this requirement.
- (6) When implementing activities in subsections (1)-(5), Permittees shall use effective strategies to educate and involve ethnic communities in storm water pollution prevention through culturally effective methods.

## **6. Industrial/Commercial Facilities Program**

### **a. General**

- i. Each Permittee shall implement an Industrial / Commercial Facilities Program that meets the requirements of this Part VI.D.6. The Industrial / Commercial



Facilities Program shall be designed to prevent illicit discharges into the MS4 and receiving waters, reduce industrial / commercial discharges of storm water to the maximum extent practicable, and prevent industrial / commercial discharges from the MS4 from causing or contributing to a violation of receiving water limitations. At a minimum, the Industrial / Commercial Facilities Program shall be implemented in accordance with the requirements listed in this Part VI.D.6, or as approved in a Watershed Management Program per Part VI.C. Minimum program components shall include the following components:

- (1) Track
- (2) Educate
- (3) Inspect
- (4) Ensure compliance with municipal ordinances at industrial and commercial facilities that are critical sources of pollutants in storm water

**b. Track Critical Industrial / Commercial Sources**

i. Each Permittee shall maintain an updated watershed-based inventory or database containing the latitude / longitude coordinates of all industrial and commercial facilities within its jurisdiction that are critical sources of storm water pollution. The inventory or database shall be maintained in electronic format and incorporation of facility information into a Geographical Information System (GIS) is recommended. Critical Sources to be tracked are summarized below:

- (1) Commercial Facilities
  - (a) Restaurants
  - (b) Automotive service facilities (including those located at automotive dealerships)
  - (c) Retail Gasoline Outlets
  - (d) Nurseries and Nursery Centers (Merchant Wholesalers, Nondurable Goods, and Retail Trade)
- (2) USEPA "Phase I" Facilities [as specified in 40 CFR §122.26(b)(14)(i)-(xi)]
- (3) Other federally-mandated facilities [as specified in 40 CFR §122.26(d)(2)(iv)(C)]
  - (a) Municipal landfills
  - (b) Hazardous waste treatment, disposal, and recovery facilities
  - (c) Industrial facilities subject to section 313 "Toxic Release Inventory" reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) [42 U.S.C. § 11023]
- (4) All other commercial or industrial facilities that the Permittee determines may contribute a substantial pollutant load to the MS4.

- ii. Each Permittee shall include the following minimum fields of information for each critical source industrial and commercial facility identified in its watershed-based inventory or database:
- (1) Name of facility
  - (2) Name of owner/ operator and contact information
  - (3) Address of facility (physical and mailing)
  - (4) North American Industry Classification System (NAICS) code
  - (5) Standard Industrial Classification (SIC) code
  - (6) A narrative description of the activities performed and/or principal products produced
  - (7) Status of exposure of materials to storm water
  - (8) Name of receiving water
  - (9) Identification of whether the facility is tributary to a CWA § 303(d) listed water body segment or water body segment subject to a TMDL, where the facility generates pollutants for which the water body segment is impaired.
  - (10) Ability to denote if the facility is known to maintain coverage under the State Water Board's General NPDES Permit for the Discharge of Stormwater Associated with Industrial Activities (Industrial General Permit) or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.
  - (11) Ability to denote if the facility has filed a No Exposure Certification with the State Water Board.
- iii. Each Permittee shall update its inventory of critical sources at least annually. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter- and intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer connection permits, and similar information).

**c. Educate Industrial / Commercial Sources**

- i. At least once during the five-year period of this Order, each Permittee shall notify the owner/operator of each of its inventoried commercial and industrial sites identified in Part VI.D.6.b of the BMP requirements applicable to the site/source.
- ii. Business Assistance Program
  - (1) Each Permittee shall implement a Business Assistance Program to provide technical information to businesses to facilitate their efforts to reduce the discharge of pollutants in storm water. Assistance shall be targeted to select business sectors or small businesses upon a determination that their activities may be contributing substantial pollutant

loads to the MS4 or receiving water. Assistance may include technical guidance and provision of educational materials. The Program may include:

- (a) On-site technical assistance, telephone, or e-mail consultation regarding the responsibilities of business to reduce the discharge of pollutants, procedural requirements, and available guidance documents.
- (b) Distribution of storm water pollution prevention educational materials to operators of auto repair shops; car wash facilities; restaurants and mobile sources including automobile/equipment repair, washing, or detailing; power washing services; mobile carpet, drape, or upholstery cleaning services; swimming pool, water softener, and spa services; portable sanitary services; and commercial applicators and distributors of pesticides, herbicides and fertilizers, if present.

**d. Inspect Critical Commercial Sources**

**i. Frequency of Mandatory Commercial Facility Inspections**

Each Permittee shall inspect all commercial facilities identified in Part VI.D.6.b twice during the 5-year term of the Order, provided that the first mandatory compliance inspection occurs no later than 2 years after the effective date of this Order. A minimum interval of 6 months between the first and the second mandatory compliance inspection is required. In addition, each Permittee shall implement the activities outlined in the following subparts.

**ii. Scope of Mandatory Commercial Facility Inspections**

Each Permittee shall inspect all commercial facilities to confirm that storm water and non-storm water BMPs are being effectively implemented in compliance with municipal ordinances. At each facility, inspectors shall verify that the operator is implementing effective source control BMPs for each corresponding activity. Each Permittee shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA), a water body subject to TMDL provisions in Part VI.E, or a CWA § 303(d) listed impaired water body. Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls.

**e. Inspect Critical Industrial Sources**

Each Permittee shall conduct industrial facility compliance inspections as specified below.

**i. Frequency of Mandatory Industrial Facility Compliance Inspections**

**(1) Minimum Inspection Frequency**

Each Permittee shall perform an initial mandatory compliance inspection at all industrial facilities identified in Part VI.D.6.b no later than 2 years after the effective date of this Order. After the initial inspection, all

facilities that have not filed a No Exposure Certification with the State Water Board are subject to a second mandatory compliance inspection. A minimum interval of 6 months between the first and the second mandatory compliance inspection is required. A facility need not be inspected more than twice during the term of the Order unless subject to an enforcement action as specified in Part VI.D.6.h below.

**(2) Exclusion of Facilities Previously Inspected by the Regional Water Board**

Each Permittee shall review the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) database<sup>24</sup> at defined intervals to determine if an industrial facility has recently been inspected by the Regional Water Board. The first interval shall occur approximately 2 years after the effective date of the Order. The Permittee does not need to inspect the facility if it is determined that the Regional Water Board conducted an inspection of the facility within the prior 24 month period. The second interval shall occur approximately 4 years after the effective date of the Order. Likewise, the Permittee does not need to inspect the facility if it is determined that the Regional Water Board conducted an inspection of the facility within the prior 24 month period.

**(3) No Exposure Verification**

As a component of the first mandatory inspection, each Permittee shall identify those facilities that have filed a No Exposure Certification with the State Water Board. Approximately 3 to 4 years after the effective date of the Order, each Permittee shall evaluate its inventory of industrial facilities and perform a second mandatory compliance inspection at a minimum of 25% of the facilities identified to have filed a No Exposure Certification. The purpose of this inspection is to verify the continuity of the no exposure status.

**(4) Exclusion Based on Watershed Management Program**

A Permittee is exempt from the mandatory inspection frequencies listed above if it is implementing industrial inspections in accordance with an approved Watershed Management Program per Part VI.C.

**ii. Scope of Mandatory Industrial Facility Inspections**

Each Permittee shall confirm that each industrial facility:

- (1) Has a current Waste Discharge Identification (WDID) number for coverage under the Industrial General Permit, and that a Storm Water Pollution Prevention Plan (SWPPP) is available on-site; *or*
- (2) Has applied for, and has received a current No Exposure Certification for facilities subject to this requirement;
- (3) Is effectively implementing BMPs in compliance with municipal ordinances. Facilities must implement the source control BMPs identified

<sup>24</sup> SMARTS is accessible at <https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp>

in Table 10, unless the pollutant generating activity does not occur. The Permittees shall require implementation of additional BMPs where storm water from the MS4 discharges to a water body subject to TMDL Provisions in Part VI.E, or a CWA § 303(d) listed impaired water body. Likewise, if the specified BMPs are not adequately protective of water quality standards, a Permittee may require additional site-specific controls. For critical sources that discharge to MS4s that discharge to SEAs, each Permittee shall require operators to implement additional pollutant-specific controls to reduce pollutants in storm water runoff that are causing or contributing to exceedances of water quality standards.

- (4) Applicable industrial facilities identified as not having either a current WDID or No Exposure Certification shall be notified that they must obtain coverage under the Industrial General Permit and shall be referred to the Regional Water Board per the Progressive Enforcement Policy procedures identified in Part VI.D.2.

**f. Source Control BMPs for Commercial and Industrial Facilities**

Effective source control BMPs for the activities listed in Table 10 shall be implemented at commercial and industrial facilities, unless the pollutant generating activity does not occur:

**Table 10. Source Control BMPs at Commercial and Industrial Facilities**

<b>Pollutant-Generating Activity</b>	<b>BMP Narrative Description</b>
Unauthorized Non-Storm water Discharges	Effective elimination of non-storm water discharges
Accidental Spills/ Leaks	Implementation of effective spills/ leaks prevention and response procedures
Vehicle/ Equipment Fueling	Implementation of effective fueling source control devices and practices
Vehicle/ Equipment Cleaning	Implementation of effective equipment/ vehicle cleaning practices and appropriate wash water management practices
Vehicle/ Equipment Repair	Implementation of effective vehicle/ equipment repair practices and source control devices
Outdoor Liquid Storage	Implementation of effective outdoor liquid storage source controls and practices
Outdoor Equipment Operations	Implementation of effective outdoor equipment source control devices and practices
Outdoor Storage of Raw Materials	Implementation of effective source control practices and structural devices
Storage and Handling of Solid Waste	Implementation of effective solid waste storage/ handling practices and appropriate control measures
Building and Grounds Maintenance	Implementation of effective facility maintenance practices

<b>Pollutant-Generating Activity</b>	<b>BMP Narrative Description</b>
Parking/ Storage Area Maintenance	Implementation of effective parking/ storage area designs and housekeeping/ maintenance practices
Storm water Conveyance System Maintenance Practices	Implementation of proper conveyance system operation and maintenance protocols
<b>Pollutant-Generating Activity</b>	<b>BMP Narrative Description from Regional Water Board Resolution No. 98-08</b>
Sidewalk Washing	<ol style="list-style-type: none"> <li>1. Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and</li> <li>2. Use high pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallons per square feet of sidewalk area.</li> </ol>
Street Washing	Collect and divert wash water to the sanitary sewer – publically owned treatment works (POTW). Note: POTW approval may be needed.

**g. Significant Ecological Areas (SEAs)**

See VI.D.6.e.ii.3.

**h. Progressive Enforcement**

Each Permittee shall implement its Progressive Enforcement Policy to ensure that Industrial / Commercial facilities are brought into compliance with all storm water requirements within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

**7. Planning and Land Development Program**

**a. Purpose**

- i. Each Permittee shall implement a Planning and Land Development Program pursuant to Part VI.D.7.b for all New Development and Redevelopment projects subject to this Order to:
  - (1) Lessen the water quality impacts of development by using smart growth practices such as compact development, directing development towards existing communities via infill or redevelopment, and safeguarding of environmentally sensitive areas.
  - (2) Minimize the adverse impacts from storm water runoff on the biological integrity of Natural Drainage Systems and the beneficial uses of water

bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21000 et seq.).

- (3) Minimize the percentage of impervious surfaces on land developments by minimizing soil compaction during construction, designing projects to minimize the impervious area footprint, and employing Low Impact Development (LID) design principles to mimic predevelopment hydrology through infiltration, evapotranspiration and rainfall harvest and use.
- (4) Maintain existing riparian buffers and enhance riparian buffers when possible.
- (5) Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs (including Source Control BMPs such as good housekeeping practices), LID Strategies, and Treatment Control BMPs.
- (6) Properly select, design and maintain LID and Hydromodification Control BMPs to address pollutants that are likely to be generated, reduce changes to pre-development hydrology, assure long-term function, and avoid the breeding of vectors<sup>25</sup>.
- (7) Prioritize the selection of BMPs to remove storm water pollutants, reduce storm water runoff volume, and beneficially use storm water to support an integrated approach to protecting water quality and managing water resources in the following order of preference:
  - (a) On-site infiltration, bioretention and/or rainfall harvest and use.
  - (b) On-site biofiltration, off-site ground water replenishment, and/or off-site retrofit.

## **b. Applicability**

### **i. New Development Projects**

- (1) Development projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
  - (a) All development projects equal to 1 acre or greater of disturbed area and adding more than 10,000 square feet of impervious surface area
  - (b) Industrial parks 10,000 square feet or more of surface area
  - (c) Commercial malls 10,000 square feet or more surface area
  - (d) Retail gasoline outlets 5,000 square feet or more of surface area
  - (e) Restaurants (SIC 5812) 5,000 square feet or more of surface area

<sup>25</sup> Treatment BMPs when designed to drain within 96 hours of the end of rainfall minimize the potential for the breeding of vectors. See California Department of Public Health *Best Management Practices for Mosquito Control in California* (2012) at <http://www.westnile.ca.gov/resources.php>

- (f) Parking lots 5,000 square feet or more of impervious surface area, or with 25 or more parking spaces
- (g) Street and road construction of 10,000 square feet or more of impervious surface area shall follow USEPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets<sup>26</sup> (December 2008 EPA-833-F-08-009) to the maximum extent practicable. Street and road construction applies to standalone streets, roads, highways, and freeway projects, and also applies to streets within larger projects.
- (h) Automotive service facilities (SIC 5013, 5014, 5511, 5541, 7532-7534 and 7536-7539) 5,000 square feet or more of surface area
- (i) Redevelopment projects in subject categories that meet Redevelopment thresholds identified in Part VI.D.6.b.ii (Redevelopment Projects) below
- (j) Projects located in or directly adjacent to, or discharging directly to a Significant Ecological Area (SEA), where the development will:
  - (i) Discharge storm water runoff that is likely to impact a sensitive biological species or habitat; and
  - (ii) Create 2,500 square feet or more of impervious surface area
- (k) Single-family hillside homes. To the extent that a Permittee may lawfully impose conditions, mitigation measures or other requirements on the development or construction of a single-family home in a hillside area as defined in the applicable Permittee's Code and Ordinances, each Permittee shall require that during the construction of a single-family hillside home, the following measures are implemented:
  - (i) Conserve natural areas
  - (ii) Protect slopes and channels
  - (iii) Provide storm drain system stenciling and signage
  - (iv) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability
  - (v) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

## ii. Redevelopment Projects

- (1) Redevelopment projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
  - (a) Land-disturbing activity that results in the creation or addition or replacement of 5,000 square feet or more of impervious surface area

<sup>26</sup> <http://water.epa.gov/infrastructure/greeninfrastructure/index.cfm>



on an already developed site on development categories identified in Part VI.D.6.c. (New Development/Redevelopment Performance Criteria).

- (b) Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post-construction storm water quality control requirements, the entire project must be mitigated.
- (c) Where Redevelopment results in an alteration of less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post-construction storm water quality control requirements, only the alteration must be mitigated, and not the entire development.
  - (i) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Impervious surface replacement, such as the reconstruction of parking lots and roadways which does not disturb additional area and maintains the original grade and alignment, is considered a routine maintenance activity. Redevelopment does not include the repaving of existing roads to maintain original line and grade.
  - (ii) Existing single-family dwelling and accessory structures are exempt from the Redevelopment requirements unless such projects create, add, or replace 10,000 square feet of impervious surface area.
- (d) In this section, Existing Development or Redevelopment projects shall mean all discretionary permit projects or project phases that have not been deemed complete for processing, or discretionary permit projects without vesting tentative maps that have not requested and received an extension of previously granted approvals within 90 days of adoption of the Order. Projects that have been deemed complete within 90 days of adoption of the Order are not subject to the requirements Section 7.c. For Permittee's projects the effective date shall be the date the governing body or their designee approves initiation of the project design.
- (e) Specifically, the Newhall Ranch Project Phases I and II (a.k.a. the Landmark and Mission Village projects) are deemed to be an existing development that will at a minimum, be designed to comply with the Specific LID Performance Standards attached to the Waste Discharge Requirements (Order No. R4-2012-0139). All subsequent phases of the Newhall Ranch Project constructed during the term of this Order shall be subject to the requirements of this Order.

**c. New Development/ Redevelopment Project Performance Criteria**

**i. Integrated Water Quality/Flow Reduction/Resources Management Criteria**

- (1) Each Permittee shall require all New Development and Redevelopment projects (referred to hereinafter as "new projects") identified in Part VI.D.7.b to control pollutants, pollutant loads, and runoff volume emanating from the project site by: (1) minimizing the impervious surface area and (2) controlling runoff from impervious surfaces through infiltration, bioretention and/or rainfall harvest and use.
- (2) Except as provided in Part VI.D.7.c.ii. (Technical Infeasibility or Opportunity for Regional Ground Water Replenishment), Part VI.D.7.d.i (Local Ordinance Equivalence), or Part VI.D.7.c.v (Hydromodification), below, each Permittee shall require the project to retain on-site the Stormwater Quality Design Volume (SWQDv) defined as the runoff from:
  - (a) The 0.75-inch, 24-hour rain event or
  - (b) The 85th percentile, 24-hour rain event, as determined from the Los Angeles County 85th percentile precipitation isohyetal map, *whichever is greater*.
- (3) Bioretention and biofiltration systems shall meet the design specifications provided in Attachment H to this Order unless otherwise approved by the Regional Water Board Executive Officer.
- (4) When evaluating the potential for on-site retention, each Permittee shall consider the maximum potential for evapotranspiration from green roofs and rainfall harvest and use.

**ii. Alternative Compliance for Technical Infeasibility or Opportunity for Regional Ground Water Replenishment**

- (1) In instances of technical infeasibility or where a project has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location, each Permittee may allow projects to comply with this Order through the alternative compliance measures as described in Part VI.D.7.c.iii.
- (2) To demonstrate technical infeasibility, the project applicant must demonstrate that the project cannot reliably retain 100 percent of the SWQDv on-site, even with the maximum application of green roofs and rainwater harvest and use, and that compliance with the applicable post-construction requirements would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from conditions including the following:
  - (a) The infiltration rate of saturated in-situ soils is less than 0.3 inch per hour and it is not technically feasible to amend the in-situ soils to attain an infiltration rate necessary to achieve reliable performance of infiltration or bioretention BMPs in retaining the SWQDv on-site.

- (b) Locations where seasonal high ground water is within 5 to 10 feet of the surface,
  - (c) Locations within 100 feet of a ground water well used for drinking water,
  - (d) Brownfield development sites where infiltration poses a risk of causing pollutant mobilization,
  - (e) Other locations where pollutant mobilization is a documented concern<sup>27</sup>,
  - (f) Locations with potential geotechnical hazards, or
  - (g) Smart growth and infill or redevelopment locations where the density and/ or nature of the project would create significant difficulty for compliance with the on-site volume retention requirement.
- (3) To utilize alternative compliance measures to replenish ground water at an offsite location, the project applicant shall demonstrate (i) why it is not advantageous to replenish ground water at the project site, (ii) that ground water can be used for beneficial purposes at the offsite location, and (iii) that the alternative measures shall also provide equal or greater water quality benefits to the receiving surface water than the Water Quality/Flow Reduction/Resource Management Criteria in Part VI.7.D.c.i.

### iii. Alternative Compliance Measures

When a Permittee determines a project applicant has demonstrated that it is technically infeasible to retain 100 percent of the SWQDv on-site, or is proposing an alternative offsite project to replenish regional ground water supplies, the Permittee shall require one of the following mitigation options:

#### (1) On-site Biofiltration

- (a) If using biofiltration due to demonstrated technical infeasibility, then the new project must biofiltrate 1.5 times the portion of the SWQDv that is not reliably retained on-site, as calculated by Equation 1 below.

Equation 1:

$$B_v = 1.5 * [SWQD_v - R_v]$$

Where:

B<sub>v</sub> = biofiltration volume

<sup>27</sup> Pollutant mobilization is considered a documented concern at or near properties that are contaminated or store hazardous substances underground.

$SWQD_v$  = the storm water runoff from a 0.75 inch, 24-hour storm or the 85<sup>th</sup> percentile storm, *whichever is greater*.

$R_v$  = volume reliably retained on-site

(b) Conditions for On-site Biofiltration

- (i) Biofiltration systems shall meet the design specifications provided in Attachment H to this Order unless otherwise approved by the Regional Water Board Executive Officer.
- (ii) Biofiltration systems discharging to a receiving water that is included on the Clean Water Act section 303(d) list of impaired water quality-limited water bodies due to nitrogen compounds or related effects shall be designed and maintained to achieve enhanced nitrogen removal capability. See Attachment H for design criteria for underdrain placement to achieve enhanced nitrogen removal.

(2) Offsite Infiltration

- (a) Use infiltration or bioretention BMPs to intercept a volume of storm water runoff equal to the  $SWQD_v$ , less the volume of storm water runoff reliably retained on-site, at an approved offsite project, and
- (b) Provide pollutant reduction (treatment) of the storm water runoff discharged from the project site in accordance with the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.
- (c) The required offsite mitigation volume shall be calculated by Equation 2 below and equal to:

Equation 2:

$$M_v = 1.0 * [SWQD_v - R_v]$$

Where:

$M_v$  = mitigation volume

$SWQD_v$  = runoff from the 0.75 inch, 24-hour storm event or the 85<sup>th</sup> percentile storm, *whichever is greater*

$R_v$  = the volume of storm water runoff reliably retained on-site.

(3) Ground Water Replenishment Projects

Permittees may propose, in their Watershed Management Program or EWMP, regional projects to replenish regional ground water supplies at offsite locations, provided the groundwater supply has a designated beneficial use in the Basin Plan.

- (a) Regional groundwater replenishment projects must use infiltration, ground water replenishment, or bioretention BMPs to intercept a volume of storm water runoff equal to the SWQDv for new development and redevelopment projects, subject to Permittee conditioning and approval for the design and implementation of post-construction controls, within the approved project area, and
- (b) Provide pollutant reduction (treatment) of the storm water runoff discharged from development projects, within the project area, subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution in accordance with the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.
- (c) Permittees implementing a regional ground water replenishment project in lieu of onsite controls shall ensure the volume of runoff captured by the project shall be equal to:

Equation 2:

$$Mv = 1.0 * [SWQDv - Rv]$$

Where:

Mv = mitigation volume

SWQDv = runoff from the 0.75 inch, 24-hour storm event or the 85th percentile storm, whichever is greater

Rv = the volume of storm water runoff reliably retained on-site.

- (d) Regional groundwater replenishment projects shall be located in the same sub-watershed (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) as the new development or redevelopment projects which did not implement on site retention BMPs . Each Permittee may consider locations outside of the HUC-12 but within the HUC-10 subwatershed area if there are no opportunities within the HUC-12 subwatershed or if greater pollutant reductions and/or ground water replenishment can be achieved at a location within the expanded HUC-10 subwatershed. The use of a mitigation, ground water replenishment, or retrofit project outside of the HUC-12 subwatershed is subject to the approval of the Executive Officer of the Regional Water Board.

#### (4) Offsite Project - Retrofit Existing Development

Use infiltration, bioretention, rainfall harvest and use and/or biofiltration BMPs to retrofit an existing development, with similar land uses as the new development or land uses associated with comparable or higher storm water runoff event mean concentrations (EMCs) than the new development.

Comparison of EMCs for different land uses shall be based on published data from studies performed in southern California. The retrofit plan shall be designed and constructed to:

- (a) Intercept a volume of storm water runoff equal to the mitigation volume ( $M_v$ ) as described above in Equation 2, except biofiltration BMPs shall be designed to meet the biofiltration volume as described in Equation 1 and
- (b) Provide pollutant reduction (treatment) of the storm water runoff from the project site as described in the Water Quality Mitigation Criteria provided in Part VI.D.7.c.iv.

(5) Conditions for Offsite Projects

- (a) Project applicants seeking to utilize these alternative compliance provisions may propose other offsite projects, which the Permittees may approve if they meet the requirements of this subpart.
- (b) Location of offsite projects. Offsite projects shall be located in the same sub-watershed (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) as the new development or redevelopment project. Each Permittee may consider locations outside of the HUC-12 but within the HUC-10 subwatershed area if there are no opportunities within the HUC-12 subwatershed or if greater pollutant reductions and/or ground water replenishment can be achieved at a location within the expanded HUC-10 subwatershed. The use of a mitigation, ground water replenishment, or retrofit project outside of the HUC-12 subwatershed is subject to the approval of the Executive Officer of the Regional Water Board.
- (c) Project applicant must demonstrate that equal benefits to ground water recharge cannot be met on the project site.
- (d) Each Permittee shall develop a prioritized list of offsite mitigation, ground water replenishment and/or retrofit projects, and when feasible, the mitigation must be directed to the highest priority project within the same HUC-12 or if approved by the Regional Water Board Executive Officer, the HUC-10 drainage area, as the new development project.
- (e) Infiltration/bioretention shall be the preferred LID BMP for offsite mitigation or ground water replenishment projects. Offsite retrofit projects may include green streets, parking lot retrofits, green roofs, and rainfall harvest and use. Biofiltration BMPs may be considered for retrofit projects when infiltration, bioretention or rainfall harvest and use is technically infeasible.
- (f) Each Permittee shall develop a schedule for the completion of offsite projects, including milestone dates to identify, fund, design, and construct the projects. Offsite projects shall be completed as soon as possible, and at the latest, within 4 years of the certificate of occupancy for the first project that contributed funds toward the

construction of the offsite project, unless a longer period is otherwise authorized by the Executive Officer of the Regional Water Board. For public offsite projects, each Permittee must provide in their annual reports a summary of total offsite project funds raised to date and a description (including location, general design concept, volume of water expected to be retained, and total estimated budget) of all pending public offsite projects. Funding sufficient to address the offsite volume must be transferred to the Permittee (for public offsite mitigation projects) or to an escrow account (for private offsite mitigation projects) within one year of the initiation of construction.

- (g) Offsite projects must be approved by the Permittee and may be subject to approval by the Regional Water Board Executive Officer, if a third-party petitions the Executive Officer to review the project. Offsite projects will be publicly noticed on the Regional Water Board's website for 30 days prior to approval.
- (h) The project applicant must perform the offsite projects as approved by either the Permittee or the Regional Water Board Executive Officer or provide sufficient funding for public or private offsite projects to achieve the equivalent mitigation storm water volume.

#### (6) Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Water Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly for New and Redevelopment requirements for the area covered by the regional or sub-regional storm water mitigation program. Upon review and a determination by the Regional Water Board Executive Officer that the proposal is technically valid and appropriate, the Regional Water Board may consider for approval such a program if its implementation meets all of the following requirements:

- (a) Retains the runoff from the 85<sup>th</sup> percentile, 24-hour rain event or the 0.75 inch, 24-hour rain event, whichever is greater;
- (b) Results in improved storm water quality;
- (c) Protects stream habitat;
- (d) Promotes cooperative problem solving by diverse interests;
- (e) Is fiscally sustainable and has secure funding; and
- (f) Is completed in five years including the construction and start-up of treatment facilities.
- (g) Nothing in this provision shall be construed as to delay the implementation of requirements for new and redevelopment, as approved in this Order.

#### (7) Water Quality Mitigation Criteria

- (a) Each Permittee shall require all New Development and Redevelopment projects that have been approved for offsite mitigation or ground water replenishment projects as defined in Part VI.D.7.c.ii-iii to also provide treatment of storm water runoff from the project site. Each Permittee shall require these projects to design and implement post-construction storm water BMPs and control measures to reduce pollutant loading as necessary to:
  - (i) Meet the pollutant specific benchmarks listed in Table 11 at the treatment systems outlet or prior to the discharge to the MS4, and
  - (ii) Ensure that the discharge does not cause or contribute to an exceedance of water quality standards at the Permittee's downstream MS4 outfall.
- (b) Each Permittee may allow the project proponent to install flow-through modular treatment systems including sand filters, or other proprietary BMP treatment systems with a demonstrated efficiency at least equivalent to a sand filter. The sizing of the flow through treatment device shall be based on a rainfall intensity of:
  - (i) 0.2 inches per hour, or
  - (ii) The one year, one-hour rainfall intensity as determined from the most recent Los Angeles County isohyetal map, *whichever is greater*.

**Table 11. Benchmarks Applicable to New Development Treatment BMPs<sup>28</sup>**

**Conventional Pollutants**

Pollutant	Suspended Solids mg/L	Total P mg/L	Total N mg/L		TKN mg/L	
Effluent Concentration	14	0.13	1.28		1.09	

**Metals**

Pollutant	Total Cd µg/L	Total Cu µg/L	Total Cr µg/L	Total Pb µg/L	Total Zn µg/L
Effluent Concentration	0.3	6	2.8	2.5	23

<sup>28</sup> The treatment control BMP performance benchmarks were developed from the median effluent water quality values of the six highest performing BMPs, per pollutant, in the storm water BMP database (<http://www.bmpdatabase.org/>, last visited September 25, 2012).



- (c) In addition to the requirements for controlling pollutant discharges as described in Part VI.D.7.c.iii. and the treatment benchmarks described above, each Permittee shall ensure that the new development or redevelopment will not cause or contribute to an exceedance of applicable water quality-based effluent limitations established in Part VI.E pursuant to Total Maximum Daily Loads (TMDLs).

**iv. Hydromodification (Flow/ Volume/ Duration) Control Criteria**

Each Permittee shall require all New Development and Redevelopment projects located within natural drainage systems as described in Part VI.D.7.c.iv.(1)(a)(iii) to implement hydrologic control measures, to prevent accelerated downstream erosion and to protect stream habitat in natural drainage systems. The purpose of the hydrologic controls is to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration. This shall be achieved by maintaining the project's pre-project storm water runoff flow rates and durations.

**(1) Description**

- (a) Hydromodification control in natural drainage systems shall be achieved by maintaining the Erosion Potential ( $E_p$ ) in streams at a value of 1, unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and prevent damage to stream habitat in natural drainage system tributaries (see Attachment J - Determination of Erosion Potential).
- (ii) Hydromodification control may include one, or a combination of on-site, regional or sub-regional hydromodification control BMPs, LID strategies, or stream and riparian buffer restoration measures. Any in-stream restoration measure shall not adversely affect the beneficial uses of the natural drainage systems.
- (iii) Natural drainage systems that are subject to the hydromodification assessments and controls as described in this Part of the Order, include all drainages that have not been improved (e.g., channelized or armored with concrete, shotcrete, or rip-rap) or drainage systems that are tributary to a natural drainage system, except as provided in Part VI.D.7c.iv.(1)(b)--Exemptions to Hydromodification Controls [see below]. The clearing or dredging of a natural drainage system does not constitute an "improvement."
- (iv) Until the State Water Board or the Regional Water Board adopts a final Hydromodification Policy or criteria, Permittees shall implement the Hydromodification Control Criteria described in Part VI.D.7.c.iv.(1)(c) to control the potential adverse impacts of changes in hydrology that may result from new development and

redevelopment projects located within natural drainage systems as described in Part VI.D.7.c.iv.(1)(a)(iii).

- (b) Exemptions to Hydromodification Controls. Permittees may exempt the following New Development and Redevelopment projects from implementation of hydromodification controls where assessments of downstream channel conditions and proposed discharge hydrology indicate that adverse hydromodification effects to beneficial uses of Natural Drainage Systems are unlikely:
- (i) Projects that are replacement, maintenance or repair of a Permittee's existing flood control facility, storm drain, or transportation network.
  - (ii) Redevelopment Projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions.
  - (iii) Projects that have any increased discharge directly or via a storm drain to a sump, lake, area under tidal influence, into a waterway that has a 100-year peak flow (Q100) of 25,000 cfs or more, or other receiving water that is not susceptible to hydromodification impacts.
  - (iv) Projects that discharge directly or via a storm drain into concrete or otherwise engineered (not natural) channels (e.g., channelized or armored with rip rap, shotcrete, etc.), which, in turn, discharge into receiving water that is not susceptible to hydromodification impacts (as in Parts VI.D.7.c.iv.(1)(b)(i)-(iii) above).
  - (v) LID BMPs implemented on single family homes are sufficient to comply with Hydromodification criteria.
- (c) Hydromodification Control Criteria. The Hydromodification Control Criteria to protect natural drainage systems are as follows:
- (i) Except as provided for in Part VI.D.7.c.iv.(1)(b), projects disturbing an area greater than 1 acre but less than 50 acres within natural drainage systems will be presumed to meet pre-development hydrology if one of the following demonstrations is made:
    - 1. The project is designed to retain on-site, through infiltration, evapotranspiration, and/or harvest and use, the storm water volume from the runoff of the 95<sup>th</sup> percentile, 24-hour storm, or
    - 2. The runoff flow rate, volume, velocity, and duration for the post-development condition do not exceed the pre-development condition for the 2-year, 24-hour rainfall event. This condition may be substantiated by simple screening models, including those described in *Hydromodification Effects on Flow Peaks*

*and Durations in Southern California Urbanizing Watersheds* (Hawley et al., 2011) or other models acceptable to the Executive Officer of the Regional Water Board, or

3. The Erosion Potential ( $E_p$ ) in the receiving water channel will approximate 1, as determined by a Hydromodification Analysis Study and the equation presented in Attachment J. Alternatively, Permittees can opt to use other work equations to calculate Erosion Potential with Executive Officer approval.
- (ii) Projects disturbing 50 acres or more within natural drainage systems will be presumed to meet pre-development hydrology based on the successful demonstration of one of the following conditions:
1. The site infiltrates on-site at least the runoff from a 2-year, 24-hour storm event, or
  2. The runoff flow rate, volume, velocity, and duration for the post-development condition does not exceed the pre-development condition for the 2-year, 24-hour rainfall events. These conditions must be substantiated by hydrologic modeling acceptable to the Regional Water Board Executive Officer, or
  3. The Erosion Potential ( $E_p$ ) in the receiving water channel will approximate 1, as determined by a Hydromodification Analysis Study and the equation presented in Attachment J.

(c) Alternative Hydromodification Criteria

- (i) Permittees may satisfy the requirement for Hydromodification Controls by implementing the hydromodification requirements in the County of Los Angeles Low Impact Development Manual (2009) for all projects disturbing an area greater than 1 acre within natural drainage systems.
- (ii) Each Permittee may alternatively develop and implement watershed specific Hydromodification Control Plans (HCPs). Such plans shall be developed no later than one year after the effective date of this Order.
- (iii) The HCP shall identify:
  1. Stream classifications
  2. Flow rate and duration control methods
  3. Sub-watershed mitigation strategies
  4. Stream and/or riparian buffer restoration measures, which will maintain the stream and tributary Erosion Potential at 1 unless

an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and prevent damage to stream habitat in natural drainage system tributaries.

(iv) The HCP shall contain the following elements:

1. Hydromodification Management Standards
2. Natural Drainage Areas and Hydromodification Management Control Areas
3. New Development and Redevelopment Projects subject to the HCP
4. Description of authorized Hydromodification Management Control BMPs
5. Hydromodification Management Control BMP Design Criteria
6. For flow duration control methods, the range of flows to control for, and goodness of fit criteria
7. Allowable low critical flow,  $Q_c$ , which initiates sediment transport
8. Description of the approved Hydromodification Model
9. Any alternate Hydromodification Management Model and Design
10. Stream Restoration Measures Design Criteria
11. Monitoring and Effectiveness Assessment
12. Record Keeping
13. The HCP shall be deemed in effect upon Executive Officer approval.

v. Watershed Equivalence.

Regardless of the methods through which Permittees allow project applicants to implement alternative compliance measures, the subwatershed-wide (defined as draining to the same HUC-12 hydrologic area in the Basin Plan) result of all development must be at least the same level of water quality protection as would have been achieved if all projects utilizing these alternative compliance provisions had complied with Part VI.D.7.c.i (Integrated Water Quality/Flow Reduction/Resource Management Criteria).

vi. Annual Report

Each Permittee shall provide in their annual report to the Regional Water Board a list of mitigation project descriptions and estimated pollutant and flow reduction analyses (compiled from design specifications submitted by project

applicants and approved by the Permittee(s)). Within 4 years of Order adoption, Permittees must submit in their Annual Report, a comparison of the expected aggregate results of alternative compliance projects to the results that would otherwise have been achieved by retaining on site the SWQDv.

#### **d. Implementation**

##### **i. Local Ordinance Equivalence**

A Permittee that has adopted a local LID ordinance prior to the adoption of this Order, and which includes a retention requirement numerically equal to the 0.75-inch, 24-hour rain event or the 85<sup>th</sup> percentile, 24-hour rain event, whichever is greater, may submit documentation to the Regional Water Board that the alternative requirements in the local ordinance will provide equal or greater reduction in storm water discharge pollutant loading and volume as would have been obtained through strict conformance with Part VI.D.7.c.i. (Integrated Water Quality/Flow Reduction Resources Management Criteria) or Part VI.D.7.c.ii. (Alternative Compliance Measures for Technical Infeasibility or Opportunity for Regional Ground water Replenishment) of this Order and, if applicable, Part VI.D.7.c.iv. (Hydromodification (Flow/Volume Duration) Control Criteria).

- (1) Documentation shall be submitted within 180 days after the effective date of this Order.
- (2) The Regional Water Board shall provide public notice of the proposed equivalency determination and a minimum 30-day period for public comment. After review and consideration of public comments, the Regional Water Board Executive Officer will determine whether implementation of the local ordinance provides equivalent pollutant control to the applicable provisions of this Order. Local ordinances that do not strictly conform to the provisions of this Order must be approved by the Regional Water Board Executive Officer as being "equivalent" in effect to the applicable provisions of this Order in order to substitute for the requirements in Parts VI.D.7.c.i and, where applicable, VI.D.7.c.iv.
- (3) Where the Regional Water Board Executive Officer determines that a Permittee's local LID ordinance does not provide equivalent pollutant control, the Permittee shall either
  - (a) Require conformance with Parts VI.D.7.c.i and, where applicable, VI.D.7.c.iv, or
  - (b) Update its local ordinance to conform to the requirements herein within two years of the effective date of this Order.

##### **ii. Project Coordination**

- (1) Each Permittee shall facilitate a process for effective approval of post-construction storm water control measures. The process shall include:
  - (a) Detailed LID site design and BMP review including BMP sizing calculations, BMP pollutant removal performance, and municipal approval; and

- (b) An established structure for communication and delineated authority between and among municipal departments that have jurisdiction over project review, plan approval, and project construction through memoranda of understanding or an equivalent agreement.

### iii. Maintenance Agreement and Transfer

- (1) Prior to issuing approval for final occupancy, each Permittee shall require that all new development and redevelopment projects subject to post-construction BMP requirements, with the exception of simple LID BMPs implemented on single family residences, provide an operation and maintenance plan, monitoring plan, where required, and verification of ongoing maintenance provisions for LID practices, Treatment Control BMPs, and Hydromodification Control BMPs including but not limited to: final map conditions, legal agreements, covenants, conditions or restrictions, CEQA mitigation requirements, conditional use permits, and/or other legally binding maintenance agreements. Permittees shall require maintenance records be kept on site for treatment BMPs implemented on single family residences.
  - (a) Verification at a minimum shall include the developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either:
    - (i) A signed statement from the public entity assuming responsibility for BMP maintenance; or
    - (ii) Written conditions in the sales or lease agreement, which require the property owner or tenant to assume responsibility for BMP maintenance and conduct a maintenance inspection at least once a year; or
    - (iii) Written text in project covenants, conditions, and restrictions (CCRs) for residential properties assigning BMP maintenance responsibilities to the Home Owners Association; or
    - (iv) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of BMPs.
  - (b) Each Permittee shall require all development projects subject to post-construction BMP requirements to provide a plan for the operation and maintenance of all structural and treatment controls. The plan shall be submitted for examination of relevance to keeping the BMPs in proper working order. Where BMPs are transferred to Permittee for ownership and maintenance, the plan shall also include all relevant costs for upkeep of BMPs in the transfer. Operation and Maintenance plans for private BMPs shall be kept on-site for periodic review by Permittee inspectors.

#### **iv. Tracking, Inspection, and Enforcement of Post-Construction BMPs**

- (1) Each Permittee shall implement a tracking system and an inspection and enforcement program for new development and redevelopment post-construction storm water no later than 60 days after Order adoption date.**
  - (a) Implement a GIS or other electronic system for tracking projects that have been conditioned for post-construction BMPs. The electronic system, at a minimum, should contain the following information:**
    - (i) Municipal Project ID**
    - (ii) State WDID No.**
    - (iii) Project Acreage**
    - (iv) BMP Type and Description**
    - (v) BMP Location (coordinates)**
    - (vi) Date of Acceptance**
    - (vii) Date of Maintenance Agreement**
    - (viii) Maintenance Records**
    - (ix) Inspection Date and Summary**
    - (x) Corrective Action**
    - (xi) Date Certificate of Occupancy Issued**
    - (xii) Replacement or Repair Date**
  - (b) Inspect all development sites upon completion of construction and prior to the issuance of occupancy certificates to ensure proper installation of LID measures, structural BMPs, treatment control BMPs and hydromodification control BMPs. The inspection may be combined with other inspections provided it is conducted by trained personnel.**
  - (c) Verify proper maintenance and operation of post-construction BMPs previously approved for new development and redevelopment and operated by the Permittee. The post-construction BMP maintenance inspection program shall incorporate the following elements:**
    - (i) The development of a Post-construction BMP Maintenance Inspection checklist**
    - (ii) Inspection at least once every 2 years after project completion, of post-construction BMPs to assess operation conditions with particular attention to criteria and procedures for post-construction**



treatment control and hydromodification control BMP repair, replacement, or re-vegetation.

- (d) For post-construction BMPs operated and maintained by parties other than the Permittee, the Permittee shall require the other parties to document proper maintenance and operations.
- (e) Undertake enforcement action per the established Progressive Enforcement Policy as appropriate based on the results of the inspection. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

## **8. Development Construction Program**

- a. Each Permittee shall develop, implement, and enforce a construction program that:
  - i. Prevents illicit construction-related discharges of pollutants into the MS4 and receiving waters.
  - ii. Implements and maintains structural and non-structural BMPs to reduce pollutants in storm water runoff from construction sites.
  - iii. Reduces construction site discharges of pollutants to the MS4 to the MEP.
  - iv. Prevents construction site discharges to the MS4 from causing or contributing to a violation of water quality standards.
- b. Each Permittee shall establish for its jurisdiction an enforceable erosion and sediment control ordinance for all construction sites that disturb soil.

### **c. Applicability**

The provisions contained in Part VI.D.8.d below apply exclusively to construction sites less than 1 acre. Provisions contained in Part VI.D.8.e – j, apply exclusively to construction sites 1 acre or greater. The requirements contained in this part apply to all activities involving soil disturbance with the exception of agricultural activities. Activities covered by this permit include but are not limited to grading, vegetation clearing, soil compaction, paving, re-paving and linear underground/overhead projects (LUPs).

### **d. Requirements for Construction Sites Less than One Acre**

- I. For construction sites less than 1 acre, each Permittee shall:

- (1) Through the use of the Permittee's erosion and sediment control ordinance or and/or building permit, require the implementation of an effective combination of erosion and sediment control BMPs from Table 12 to prevent erosion and sediment loss, and the discharge of construction wastes.

**Table 12. Applicable Set of BMPs for All Construction Sites**

<b>Erosion Controls</b>	Scheduling
	Preservation of Existing Vegetation
<b>Sediment Controls</b>	Silt Fence
	Sand Bag Barrier
	Stabilized Construction Site Entrance/Exit
<b>Non-Storm Water Management</b>	Water Conservation Practices
	Dewatering Operations
<b>Waste Management</b>	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management
	Concrete Waste Management
	Sanitary/Septic Waste Management

- (2) Possess the ability to identify all construction sites with soil disturbing activities that require a permit, regardless of size, and shall be able to provide a list of permitted sites upon request of the Regional Water Board. Permittees may use existing permit databases or other tracking systems to comply with these requirements.
- (3) Inspect construction sites on as needed based on the evaluation of the factors that are a threat to water quality. In evaluating the threat to water quality, the following factors shall be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-storm water discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the particular MS4.
- (4) Implement the Permittee's Progressive Enforcement Policy to ensure that construction sites are brought into compliance with the erosion and sediment control ordinance within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.
- e. Each Permittee shall require operators of public and private construction sites within its jurisdiction to select, install, implement, and maintain BMPs that comply with its erosion and sediment control ordinance.
- f. The requirements contained in this part apply to all activities involving soil disturbance with the exception of agricultural activities. Activities covered by this permit include but are not limited to grading, vegetation clearing, soil compaction, paving, re-paving and linear underground/overhead projects (LUPs).
- g. Construction Site Inventory / Electronic Tracking System**

- i. Each Permittee shall use an electronic system to inventory grading permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) issued by the Permittee. To satisfy this requirement, the use of a database or GIS system is recommended.
- ii. Each Permittee shall complete an inventory and continuously update as new sites are permitted and sites are completed. The inventory / tracking system shall contain, at a minimum:
  - (1) Relevant contact information for each project (e.g., name, address, phone, email, etc. for the owner and contractor.
  - (2) The basic site information including location, status, size of the project and area of disturbance.
  - (3) The proximity all water bodies, water bodies listed as impaired by sediment-related pollutants, and water bodies for which a sediment-related TMDL has been adopted and approved by USEPA.
  - (4) Significant threat to water quality status, based on consideration of factors listed in Appendix 1 to the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit).
  - (5) Current construction phase where feasible.
  - (6) The required inspection frequency.
  - (7) The project start date and anticipated completion date.
  - (8) Whether the project has submitted a Notice of Intent and obtained coverage under the Construction General Permit.
  - (9) The date the Permittee approved the Erosion and Sediment Control Plan (ESCP).
  - (10) Post-Construction Structural BMPs subject to Operation and Maintenance Requirements.

#### **h. Construction Plan Review and Approval Procedures**

- i. Each Permittee shall develop procedures to review and approve relevant construction plan documents.
- ii. The review procedures shall be developed and implemented such that the following minimum requirements are met:
  - (1) Prior to issuing a grading or building permit, each Permittee shall require each operator of a construction activity within its jurisdiction to prepare and submit an ESCP prior to the disturbance of land for the Permittee's review and written approval. The construction site operator shall be prohibited from commencing construction activity prior to receipt of written approval by the Permittee. Each Permittee shall not approve any ESCP unless it contains appropriate site-specific construction site BMPs that

- meet the minimum requirements of a Permittee's erosion and sediment control ordinance.
- (2) ESCPs must include the elements of a Storm Water Pollution Prevention Plan (SWPPP). SWPPPs prepared in accordance with the requirements of the Construction General Permit can be accepted as ESCPs.
  - (3) At a minimum, the ESCP must address the following elements:
    - (a) Methods to minimize the footprint of the disturbed area and to prevent soil compaction outside of the disturbed area.
    - (b) Methods used to protect native vegetation and trees.
    - (c) Sediment/Erosion Control.
    - (d) Controls to prevent tracking on and off the site.
    - (e) Non-storm water controls (e.g., vehicle washing, dewatering, etc.).
    - (f) Materials Management (delivery and storage).
    - (g) Spill Prevention and Control.
    - (h) Waste Management (e.g., concrete washout/waste management; sanitary waste management).
    - (i) Identification of site Risk Level as identified per the requirements in Appendix 1 of the Construction General Permit.
  - (4) The ESCP must include the rationale for the selection and design of the proposed BMPs, including quantifying the expected soil loss from different BMPs.
  - (5) Each Permittee shall require that the ESCP is developed and certified by a Qualified SWPPP Developer (QSD).
  - (6) Each Permittee shall require that all structural BMPs be designed by a licensed California Engineer.
  - (7) Each Permittee shall require that for all sites, the landowner or the landowner's agent sign a statement on the ESCP as follows:
    - (a) "I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/ or inaccurate information, failing to update the ESCP to reflect current conditions, or failing to properly and/ or adequately implement the ESCP may result in revocation of grading and/ or other permits or other sanctions provided by law."
  - (8) Prior to issuing a grading or building permit, each Permittee must verify that the construction site operators have existing coverage under

applicable permits, including, but not limited to the State Water Board's Construction General Permit, and State Water Board 401 Water Quality Certification.

- (9) Each Permittee shall develop and implement a checklist to be used to conduct and document review of each ESCP.

**i. BMP Implementation Level**

- i. Each Permittee shall implement technical standards for the selection, installation and maintenance of construction BMPs for all construction sites within its jurisdiction.
- ii. The BMP technical standards shall require:
- (1) The use of BMPs that are tailored to the risks posed by the project. Sites are to be ranked from Low Risk (Risk 1) to High Risk (Risk 3). Project risks are to be calculated based on the potential for erosion from the site and the sensitivity of the receiving water body. Receiving water bodies that are listed on the Clean Water Act (CWA) Section 303(d) list for sediment or siltation are considered High Risk. Likewise, water bodies with designated beneficial uses of SPWN, COLD, and MIGR are also considered to be High Risk. The combined (sediment/receiving water) site risk shall be calculated using the methods provided in Appendix 1 of the Construction General Permit. At a minimum, the BMP technical standards shall include requirements for High Risk sites as defined in Table 15.
  - (2) The use of BMPs for all construction sites, sites equal or greater to 1 acre, and for paving projects per Tables 14 and 16 of this Order.
  - (3) Detailed installation designs and cut sheets for use within ESCPs.
  - (4) Maintenance expectations for each BMP, or category of BMPs, as appropriate.
- iii. Permittees are encouraged to adopt respective BMPs from latest versions of the *California BMP Handbook, Construction* or *Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices (BMPs) Manual* and addenda. Alternatively, Permittees are authorized to develop or adopt equivalent BMP standards consistent for Southern California and for the range of activities presented below in Tables 13 through 16.
- iv. The local BMP technical standards shall be readily available to the development community and shall be clearly referenced within each Permittee's storm water or development services website, ordinance, permit approval process and/or ESCP review forms. The local BMP technical standards shall also be readily available to the Regional Water Board upon request.
- v. Local BMP technical standards shall be available for the following:

**Table 13. Minimum Set of BMPs for All Construction Sites**

<b>Erosion Controls</b>	Scheduling
	Preservation of Existing Vegetation
<b>Sediment Controls</b>	Silt Fence
	Sand Bag Barrier
	Stabilized Construction Site Entrance/Exit
<b>Non-Storm Management</b>	<b>water</b> Water Conservation Practices
	Dewatering Operations
<b>Waste Management</b>	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management
	Concrete Waste Management
	Sanitary/Septic Waste Management

**Table 14. Additional BMPs Applicable to Construction Sites Disturbing 1 Acre or More**

<b>Erosion Controls</b>	Hydraulic Mulch
	Hydroseeding
	Soil Binders
	Straw Mulch
	Geotextiles and Mats
	Wood Mulching
<b>Sediment Controls</b>	Fiber Rolls
	Gravel Bag Berm
	Street Sweeping and/ or Vacuum
	Storm Drain Inlet Protection
	Scheduling
	Check Dam
<b>Additional Controls</b>	Wind Erosion Controls
	Stabilized Construction Entrance/ Exit
	Stabilized Construction Roadway
	Entrance/ Exit Tire Wash
<b>Non-Storm Management</b>	<b>water</b> Vehicle and Equipment Washing
	Vehicle and Equipment Fueling
	Vehicle and Equipment Maintenance
<b>Waste Management</b>	Material Delivery and Storage
	Spill Prevention and Control

**Table 15. Additional Enhanced BMPs for High Risk Sites**

<b>Erosion Controls</b>	Hydraulic Mulch
	Hydroseeding
	Soil Binders
	Straw Mulch

	Geotextiles and Mats
	Wood Mulching
	Slope Drains
<b>Sediment Controls</b>	Silt Fence
	Fiber Rolls
	Sediment Basin
	Check Dam
	Gravel Bag Berm
	Street Sweeping and/or Vacuum
	Sand Bag Barrier
	Storm Drain Inlet Protection
<b>Additional Controls</b>	Wind Erosion Controls
	Stabilized Construction Entrance/Exit
	Stabilized Construction Roadway
	Entrance/Exit Tire Wash
	Advanced Treatment Systems
<b>Non-Storm water Management</b>	Water Conservation Practices
	Dewatering Operations (Ground water dewatering only under NPDES Permit No. CAG994004)
	Vehicle and Equipment Washing
	Vehicle and Equipment Fueling
	Vehicle and Equipment Maintenance
<b>Waste Management</b>	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management

\* Applies to public roadway projects.

**Table 16. Minimum Required BMPs for Roadway Paving or Repair Operation (For Private or Public Projects)**

1.	Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall unless required by emergency conditions.
2.	Install gravel bags and filter fabric or other equivalent inlet protection at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat.
3.	Prevent the discharge of release agents including soybean oil, other oils, or diesel to the storm water drainage system or receiving waters.
4.	Minimize non storm water runoff from water use for the roller and for evaporative cooling of the asphalt.
5.	Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly.
6.	Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly.
7.	Collect solid waste by vacuuming or sweeping and securing in an

	appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly.
8.	Cover the "cold-mix" asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm.
9.	Cover loads with tarp before haul-off to a storage site, and do not overload trucks.
10.	Minimize airborne dust by using water spray or other approved dust suppressant during grinding.
11.	Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near storm water drainage system or receiving waters.
12.	Protect stockpiles with a cover or sediment barriers during a rain.

**j. Construction Site Inspection**

- i. Each Permittee shall use its legal authority to implement procedures for inspecting public and private construction sites.
- ii. The inspection procedures shall be implemented as follows:
  - (1) Inspect the public and private construction sites as specified in Table 17 below:

**Table 17. Inspection Frequencies for Sites One Acre or Greater**

Site	Inspection Frequency Shall Occur
a. All sites 1 acre or larger that discharge to a tributary listed by the state as an impaired water for sediment or turbidity under the CWA § 303(d)	(1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA <sup>29</sup> , (2) within 48 hours of a 1/2-inch rain event and at (3) least once every two weeks
b. Other sites 1 acre or more determined to be a significant threat to water quality <sup>30</sup>	
c. All other construction sites with 1 acre or more of soil disturbance not meeting the criteria above	At least monthly

- (2) Each Permittee shall inspect all phases of construction as follows:

(a) Prior to Land Disturbance

Prior to allowing an operator to commence land disturbance, each Permittee shall perform an inspection to ensure all necessary erosion

<sup>29</sup> www.srh.noaa.gov/forecast

<sup>30</sup> In evaluating the threat to water quality, the following factors shall be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-storm water discharges; past record of non-compliance by the operators of the construction site; and any water quality issues relevant to the particular MS4.



and sediment structural and non-structural BMP materials and procedures are available per the erosion and sediment control plan.

- (b) During Active Construction, including Land Development<sup>31</sup> and Vertical Construction<sup>32</sup>

In accordance with the frequencies specified in Part VI.D.8.j and Table 17 of this Order, each Permittee shall perform an inspection to ensure all necessary erosion and sediment structural and non-structural BMP materials and procedures are available per the erosion and sediment control plan throughout the construction process.

- (c) Final Landscaping / Site Stabilization<sup>33</sup>

At the conclusion of the project and as a condition of approving and/or issuing a Certificate of Occupancy, each Permittee shall inspect the constructed site to ensure that all graded areas have reached final stabilization and that all trash, debris, and construction materials, and temporary erosion and sediment BMPs are removed.

- (3) Based on the required frequencies above, each construction project shall be inspected a minimum of three times.

- (4) Inspection Standard Operating Procedures

Each Permittee shall develop, implement, and revise as necessary, standard operating procedures that identify the inspection procedures each Permittee will follow. Inspections of construction sites, and the standard operating procedures, shall include, but are not limited to:

- (a) Verification of active coverage under the Construction General Permit for sites disturbing 1 acre or more, or that are part of a planned development that will disturb 1 acre or more and a process for referring non-filers to the Regional Water Board.
- (b) Review of the applicable ESCP and inspection of the construction site to determine whether all BMPs have been selected, installed, implemented, and maintained according to the approved plan and subsequent approved revisions.
- (c) Assessment of the appropriateness of the planned and installed BMPs and their effectiveness.
- (d) Visual observation and record keeping of non-storm water discharges, potential illicit discharges and connections, and potential discharge of pollutants in storm water runoff.
- (e) Development of a written or electronic inspection report generated from an inspection checklist used in the field.

<sup>31</sup> Activities include cuts and fills, rough and finished grading; alluvium removals; canyon cleanouts; rock undercuts; keyway excavations; stockpiling of select material for capping operations; and excavation and street paving, lot grading, curbs, gutters and sidewalks, public utilities, public water facilities including fire hydrants, public sanitary sewer systems, storm sewer system and/or other drainage improvement.

<sup>32</sup> The build out of structures from foundations to roofing, including rough landscaping.

<sup>33</sup> All soil disturbing activities at each individual parcel within the site have been completed.

- (f) Tracking of the number of inspections for the inventoried construction sites throughout the reporting period to verify that the sites are inspected at the minimum frequencies required in Table 17 of this Order.

**k. Enforcement**

Each Permittee shall implement its Progressive Enforcement Policy to ensure that construction sites are brought into compliance with all storm water requirements within a reasonable time period. See Part VI.D.2 for requirements for the development and implementation of a Progressive Enforcement Policy.

**l. Permittee Staff Training**

- i. Each Permittee shall ensure that all staff whose primary job duties are related to implementing the construction storm water program are adequately trained.
- ii. Each Permittee may conduct in-house training or contract with consultants. Training shall be provided to the following staff positions of the MS4:

**(1) Plan Reviewers and Permitting Staff**

Ensure staff and consultants are trained as qualified individuals, knowledgeable in the technical review of local erosion and sediment control ordinance, local BMP technical standards, ESCP requirements, and the key objectives of the State Water Board QSD program. Permittees may provide internal training to staff or require staff to obtain QSD certification.

**(2) Erosion Sediment Control/Storm Water Inspectors**

Each Permittee shall ensure that its inspectors are knowledgeable in inspection procedures consistent with the State Water Board sponsored program QSD or a Qualified SWPPP Practitioner (QSP) or that a designated person on staff who has been trained in the key objectives of the QSD/QSP programs supervises inspection operations. Each Permittee may provide internal training to staff or require staff to obtain QSD/QSP certification. Each inspector must be knowledgeable of the local BMP technical standards and ESCP requirements.

**(3) Third-Party Plan Reviewers, Permitting Staff, and Inspectors**

If the Permittee utilizes outside parties to conduct inspections and/or review plans, each Permittee shall ensure these staff are trained per the requirements listed above. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.

**9. Public Agency Activities Program**

- a. Each Permittee shall implement a Public Agency Activities Program to minimize storm water pollution impacts from Permittee-owned or operated facilities and activities and to identify opportunities to reduce storm water pollution impacts

from areas of existing development. Requirements for Public Agency Facilities and Activities consist of the following components:

- i. Public Construction Activities Management
- ii. Public Facility Inventory
- iii. Inventory of Existing Development for Retrofitting Opportunities
- iv. Public Facility and Activity Management
- v. Vehicle and Equipment Wash Areas
- vi. Landscape, Park, and Recreational Facilities Management
- vii. Storm Drain Operation and Maintenance
- viii. Streets, Roads, and Parking Facilities Maintenance
- ix. Emergency Procedures
- x. Municipal Employee and Contractor Training

**b. Public Construction Activities Management**

- i. Each Permittee shall implement and comply with the Planning and Land Development Program requirements in Part VI.D.7 of this Order at Permittee-owned or operated (i.e., public or Permittee sponsored) construction projects that are categorized under the project types identified in Part VI.D.7.b of this Order.
- ii. Each Permittee shall implement and comply with the appropriate Development Construction Program requirements in Part VI.D.8 of this Order at Permittee-owned or operated construction projects as applicable.
- iii. For Permittee-owned or operated projects (including those under a capital improvement project plan) that disturb less than one acre of soil, each Permittee shall require an effective combination of erosion and sediment control BMPs from Table 13 (see Construction Development Program, minimum BMPs).
- iv. Each Permittee shall obtain separate coverage under the Construction General Permit for all Permittee-owned or operated construction sites that require coverage.

**c. Public Facility Inventory**

- i. Each Permittee shall maintain an updated inventory of all Permittee-owned or operated (i.e., public) facilities within its jurisdiction that are potential sources of storm water pollution. The incorporation of facility information into a GIS is recommended. Sources to be tracked include but are not limited to the following:
  - (1) Animal control facilities
  - (2) Chemical storage facilities

- (3) Composting facilities
  - (4) Equipment storage and maintenance facilities (including landscape maintenance-related operations)
  - (5) Fueling or fuel storage facilities (including municipal airports)
  - (6) Hazardous waste disposal facilities
  - (7) Hazardous waste handling and transfer facilities
  - (8) Incinerators
  - (9) Landfills
  - (10) Materials storage yards
  - (11) Pesticide storage facilities
  - (12) Fire stations
  - (13) Public restrooms
  - (14) Public parking lots
  - (15) Public golf courses
  - (16) Public swimming pools
  - (17) Public parks
  - (18) Public works yards
  - (19) Public marinas
  - (20) Recycling facilities
  - (21) Solid waste handling and transfer facilities
  - (22) Vehicle storage and maintenance yards
  - (23) Storm water management facilities (e.g., detention basins)
  - (24) All other Permittee-owned or operated facilities or activities that each Permittee determines may contribute a substantial pollutant load to the MS4.
- ii. Each Permittee shall include the following minimum fields of information for each Permittee-owned or operated facility in its inventory.
- (1) Name of facility
  - (2) Name of facility manager and contact information
  - (3) Address of facility (physical and mailing)
  - (4) A narrative description of activities performed and potential pollution sources.
  - (5) Coverage under the Industrial General Permit or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Water Board pertaining to storm water discharges.

- iii. Each Permittee shall update its inventory at least once during the 5-year term of the Order. The update shall be accomplished through collection of new information obtained through field activities or through other readily available inter and intra-agency informational databases (e.g., property management, land-use approvals, accounting and depreciation ledger account, and similar information).

**d. Inventory of Existing Development for Retrofitting Opportunities**

- i. Each Permittee shall develop an inventory of retrofitting opportunities that meets the requirements of this Part VI.9.d. Retrofit opportunities shall be identified within the public right-of-way or in coordination with a TMDL implementation plan(s). 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 as defined in Part V.A, Receiving Water Limitations.
- ii. Each Permittee shall screen existing areas of development to identify candidate areas for retrofitting using watershed models or other screening level tools.
- iii. Each Permittee shall evaluate and rank the areas of existing development identified in the screening to prioritize retrofitting candidates. Criteria for evaluation may include but are not limited to:
  - (1) Feasibility, including general private and public land availability;
  - (2) Cost effectiveness;
  - (3) Pollutant removal effectiveness;
  - (4) Tributary area potentially treated;
  - (5) Maintenance requirements;
  - (6) Landowner cooperation;
  - (7) Neighborhood acceptance;
  - (8) Aesthetic qualities;
  - (9) Efficacy at addressing concern; and
  - (10) Potential improvements to public health and safety.
- iv. Each Permittee shall consider the results of the evaluation in the following programs:
  - (1) The Permittee's storm water management program: Highly feasible projects expected to benefit water quality should be given a high priority to implement source control and treatment control BMPs in a Permittee's SWMP.

- (2) Off-site mitigation for New Development and Redevelopment: Each Permittee shall consider high priority retrofit projects as candidates for off-site mitigation projects per Part VI.D.7.c.iii.(4).(d).
  - (3) Where feasible, at the discretion of the Permittee, the existing development retrofitting program may be coordinated with flood control projects and other infrastructure improvement programs per Part VI.D.9.e.ii.(2) below.
- v. Each Permittee shall cooperate with private landowners to encourage site specific retrofitting projects. Each Permittee shall consider the following practices in cooperating with private landowners to retrofit existing development:
- (1) Demonstration retrofit projects;
  - (2) Retrofits on public land and easements that treat runoff from private developments;
  - (3) Education and outreach;
  - (4) Subsidies for retrofit projects;
  - (5) Requiring retrofit projects as enforcement, mitigation or ordinance compliance;
  - (6) Public and private partnerships;
  - (7) Fees for existing discharges to the MS4 and reduction of fees for retrofit implementation.

**e. Public Agency Facility and Activity Management**

- i. Each Permittee shall obtain separate coverage under the Industrial General Permit for all Permittee-owned or operated facilities where industrial activities are conducted that require coverage under the Industrial General Permit.
- ii. Each Permittee shall implement the following measures for Permittee- owned and operated flood management projects:
  - (1) Develop procedures to assess the impacts of flood management projects on the water quality of receiving water bodies; and
  - (2) Evaluate existing structural flood control facilities to determine if retrofitting the facility to provide additional pollutant removal from storm water is feasible.
- iii. Each Permittee shall ensure the implementation and maintenance of activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) or an equivalent set of BMPs when such activities occur at Permittee-owned or operated facilities and field activities (e.g., project sites) including but not limited to the facility types listed in Part VI.D.9.c above, and at any area that includes the activities described in Table 18, or that have the potential to discharge pollutants in storm water.

- iv. Any contractors hired by the Permittee to conduct Public Agency Activities including, but not limited to, storm and/or sanitary sewer system inspection and repair, street sweeping, trash pick-up and disposal, and street and right-of-way construction and repair shall be contractually required to implement and maintain the activity specific BMPs listed in Table 18. Each Permittee shall conduct oversight of contractor activities to ensure these BMPs are implemented and maintained.
- v. Permittee-owned or operated facilities that have obtained coverage under the Industrial General Permit shall implement and maintain BMPs consistent with the associated SWPPP and are therefore not required to implement and maintain the activity specific BMPs listed in Table 18.
- vi. Effective source control BMPs for the activities listed in Table 18 shall be implemented at Permittee-owned or operated facilities, unless the pollutant generating activity does not occur. Each Permittee shall require implementation of additional BMPs where storm water from the MS4 discharges to a significant ecological area (SEA, see Attachment A for definition), a water body subject to TMDL provisions in Part VI.E., or a CWA § 303(d) listed water body (see Part VI.E below). Likewise, for those BMPs that are not adequately protective of water quality standards, a Permittee may require additional site-specific controls.

**Table 18. BMPs for Public Agency Facilities and Activities**

<b>General and Activity Specific BMPs</b>	
<b>General BMPs</b>	Scheduling and Planning
	Spill Prevention and Control
	Sanitary/Septic Waste Management
	Material Use
	Safer Alternative Products
	Vehicle/Equipment Cleaning, Fueling and Maintenance
	Illicit Connection Detection, Reporting and Removal
	Illegal Spill Discharge Control
	Maintenance Facility Housekeeping Practices
<b>Flexible Pavement</b>	Asphalt Cement Crack and Joint Grinding/ Sealing
	Asphalt Paving
	Structural Pavement Failure (Digouts) Pavement Grinding and Paving
	Emergency Pothole Repairs
	Sealing Operations
<b>Rigid Pavement</b>	Portland Cement Crack and Joint Sealing
	Mudjacking and Drilling
	Concrete Slab and Spall Repair
<b>Slope/ Vegetation</b> <b>Drains/</b>	Shoulder Grading
	Nonlandscaped Chemical Vegetation Control
	Nonlandscaped Mechanical Vegetation Control/

<b>General and Activity Specific BMPs</b>	
	Mowing
	Nonlandscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal
	Fence Repair
	Drainage Ditch and Channel Maintenance
	Drain and Culvert Maintenance
	Curb and Sidewalk Repair
<b>Litter/ Debris/ Graffiti</b>	Sweeping Operations
	Litter and Debris Removal
	Emergency Response and Cleanup Practices
	Graffiti Removal
<b>Landscaping</b>	Chemical Vegetation Control
	Manual Vegetation Control
	Landscaped Mechanical Vegetation Control/ Mowing
	Landscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal
	Irrigation Line Repairs
	Irrigation (Watering), Potable and Nonpotable
<b>Environmental</b>	Storm Drain Stenciling
	Roadside Slope Inspection
	Roadside Stabilization
	Stormwater Treatment Devices
	Traction Sand Trap Devices
<b>Bridges</b>	Welding and Grinding
	Sandblasting, Wet Blast with Sand Injection and Hydroblasting
	Painting
	Bridge Repairs
<b>Other Structures</b>	Pump Station Cleaning
	Tube and Tunnel Maintenance and Repair
	Tow Truck Operations
	Toll Booth Lane Scrubbing Operations
<b>Electrical</b>	Sawcutting for Loop Installation
<b>Traffic Guidance</b>	Thermoplastic Striping and Marking
	Paint Striping and Marking
	Raised/ Recessed Pavement Marker Application and Removal
	Sign Repair and Maintenance
	Median Barrier and Guard Rail Repair
	Emergency Vehicle Energy Attenuation Repair
<b>Storm Maintenance</b>	Minor Slides and Slipouts Cleanup/ Repair
<b>Management and Support</b>	Building and Grounds Maintenance
	Storage of Hazardous Materials (Working Stock)
	Material Storage Control (Hazardous Waste)



<b>General and Activity Specific BMPs</b>	
	Outdoor Storage of Raw Materials
	Vehicle and Equipment Fueling
	Vehicle and Equipment Cleaning
	Vehicle and Equipment Maintenance and Repair
	Aboveground and Underground Tank Leak and Spill Control

**f. Vehicle and Equipment Washing**

- i. Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 (BMPs for Public Agency Facilities and Activities) for all fixed vehicle and equipment washing; including fire fighting and emergency response vehicles.
- ii. Each Permittee shall prevent discharges of wash waters from vehicle and equipment washing to the MS4 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
  - (1) Self-contain, and haul off for disposal; or
  - (2) Equip with a clarifier or an alternative pre-treatment device and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.
- iii. Each Permittee shall ensure that any municipal facilities constructed, redeveloped, or replaced shall not discharge wastewater from vehicle and equipment wash areas to the MS4 by plumbing all areas to the sanitary sewer in accordance with applicable waste water provider regulations, or self-containing all waste water/ wash water and hauling to a point of legal disposal.

**g. Landscape, Park, and Recreational Facilities Management**

- i. Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 for all public right-of-ways, flood control facilities and open channels, lakes and reservoirs, and landscape, park, and recreational facilities and activities.
- ii. Each Permittee shall implement an IPM program that includes the following:
  - (1) Pesticides are used only if monitoring indicates they are needed, and pesticides are applied according to applicable permits and established guidelines.
  - (2) Treatments are made with the goal of removing only the target organism.
  - (3) Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial non-target organisms, and the environment.
  - (4) The use of pesticides, including Organophosphates and Pyrethroids, does not threaten water quality.

- (5) Partner with other agencies and organizations to encourage the use of IPM.
- (6) Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) for Public Agency Facilities and Activities.
- (7) Policies, procedures, and ordinances shall include commitments and a schedule to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
  - (a) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
  - (b) Quantify pesticide use by staff and hired contractors.
  - (c) Demonstrate implementation of IPM alternatives where feasible to reduce pesticide use.

**iii. Each Permittee shall implement the following requirements:**

- (1) Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergents), and fertilizers.
- (2) Ensure there is no application of pesticides or fertilizers (1) when two or more consecutive days with greater than 50% chance of rainfall are predicted by NOAA<sup>34</sup>, (2) within 48 hours of a ½-inch rain event, or (3) when water is flowing off the area where the application is to occur. This requirement does not apply to the application of aquatic pesticides described in Part VI.D.9.g.iii.(1) above or pesticides which require water for activation.
- (3) Ensure that no banned or unregistered pesticides are stored or applied.
- (4) Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation, or are under the direct supervision of a pesticide applicator certified in the appropriate category.
- (5) Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
- (6) Store pesticides and fertilizers indoors or under cover on paved surfaces, or use secondary containment.
  - (a) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
  - (b) Regularly inspect storage areas.

**h. Storm Drain Operation and Maintenance**

---

<sup>34</sup> [www.srh.noaa.gov/forecast](http://www.srh.noaa.gov/forecast)

- i. Each Permittee shall implement and maintain the activity specific BMPs listed in Table 18 for storm drain operation and maintenance.
- ii. Ensure that all material removed from the MS4 does not reenter the system. Solid material shall be dewatered in a contained area and liquid material shall be disposed in accordance with any of the following measures:
  - (1) Self-contain, and haul off for legal disposal; or
  - (2) Applied to the land without runoff; or
  - (3) Equip with a clarifier or an alternative pre-treatment device; and plumb to the sanitary sewer in accordance with applicable waste water provider regulations.

**iii. Catch Basin Cleaning**

- (1) In areas that are not subject to a trash TMDL, each Permittee shall determine priority areas and shall update its map or list of Catch Basins with their GPS coordinates and priority:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

The map or list shall contain the rationale or data to support priority designations.

- (2) In areas that are not subject to a trash TMDL, each Permittee shall inspect catch basins according to the following schedule:

Priority A: A minimum of 3 times during the wet season (October 1 through April 15) and once during the dry season every year.

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

Priority C: A minimum of once per year.

Catch basins shall be cleaned as necessary on the basis of inspections. At a minimum, Permittees shall ensure that any catch basin that is determined to be at least 25% full of trash shall be cleaned out. Permittees shall maintain inspection and cleaning records for Regional Water Board review.

- (3) In areas that are subject to a trash TMDL, the subject Permittees shall implement the applicable provisions in Part VI.E.

**iv. Trash Management at Public Events**

- (1) Each Permittee shall require the following measures for any event in the public right of way or wherever it is foreseeable that substantial quantities

of trash and litter may be generated, including events located in areas that are subject to a trash TMDL:

- (a) Proper management of trash and litter generated; and
- (b) Arrangement for temporary screens to be placed on catch basins; or
- (c) Provide clean out of catch basins, trash receptacles, and grounds in the event area within one business day subsequent to the event.

**v. Trash Receptacles**

- (1) Each Permittee shall ensure trash receptacles, or equivalent trash capturing devices, are covered in areas newly identified as high trash generation areas within its jurisdiction.
- (2) Each Permittee shall ensure that all trash receptacles are cleaned out and maintained as necessary to prevent trash overflow.

**vi. Catch Basin Labels and Open Channel Signage**

- (1) Each Permittee shall label all storm drain inlets that they own with a legible "no dumping" message.
- (2) Each Permittee shall inspect the legibility of the stencil or label nearest each inlet prior to the wet season every year.
- (3) Each Permittee shall record all catch basins with illegible stencils and re-stencil or re-label within 180 days of inspection.
- (4) Each Permittee shall post signs, referencing local code(s) that prohibit littering and illegal dumping, at designated public access points to open channels, creeks, urban lakes, and other relevant water bodies.

**vii. Additional Trash Management Practices**

- (1) In areas that are not subject to a trash TMDL, each Permittee shall install trash excluders, or equivalent devices, on or in catch basins or outfalls to prevent the discharge of trash to the MS4 or receiving water no later than four years after the effective date of this Order in areas defined as Priority A (Part VI.D.9.h.iii.(1)) except at sites where the application of such BMP(s) alone will cause flooding. Lack of maintenance that causes flooding is not an acceptable exception to the requirement to install BMPs. Alternatively, each Permittee may implement alternative or enhanced BMPs beyond the provisions of this Order (such as but not limited to increased street sweeping, adding trash cans near trash generation sites, prompt enforcement of trash accumulation, increased trash collection on public property, increased litter prevention messages or trash nets within the MS4) that provide substantially equivalent removal of trash. Each Permittee shall demonstrate that BMPs, which substituted for trash excluders, provide equivalent trash removal performance as excluders. When outfall trash capture is provided, revision of the schedule for inspection and cleanout of catch basins in Part VI.D.9.h.iii.(2) shall be reported in the next year's annual report.

**viii. Storm Drain Maintenance**

Each Permittee shall implement a program for Storm Drain Maintenance that includes the following:

- (1) Visual monitoring of Permittee-owned open channels and other drainage structures for trash and debris at least annually.
- (2) Removal of trash and debris from open channels a minimum of once per year before the wet season.
- (3) Elimination of the discharge of contaminants during MS4 maintenance and clean outs.
- (4) Proper disposal of debris and trash removed during storm drain maintenance.

**ix. Infiltration from Sanitary Sewer to MS4/Preventive Maintenance**

- (1) Each Permittee shall implement controls and measures to prevent and eliminate infiltration of seepage from sanitary sewers to MS4s through thorough, routine preventive maintenance of the MS4.
- (2) Each Permittee that operates both a municipal sanitary sewer system and a MS4 must implement controls and measures to prevent and eliminate infiltration of seepage from the sanitary sewers to the MS4s that must include overall sanitary sewer and MS4 surveys and thorough, routine preventive maintenance of both. Implementation of a Sewer System Management Plan in accordance with the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, may be used to fulfill this requirement.
- (3) Each Permittee shall implement controls to limit infiltration of seepage from sanitary sewers to the MS4 where necessary. Such controls must include:
  - (a) Adequate plan checking for construction and new development;
  - (b) Incident response training for its municipal employees that identify sanitary sewer spills;
  - (c) Code enforcement inspections;
  - (d) MS4 maintenance and inspections;
  - (e) Interagency coordination with sewer agencies; and
  - (f) Proper education of its municipal staff and contractors conducting field operations on the MS4 or its municipal sanitary sewer (if applicable).

**x. Permittee Owned Treatment Control BMPs**

- (1) Each Permittee shall implement an inspection and maintenance program for all Permittee owned treatment control BMPs, including post-construction treatment control BMPs.

- (2) Each Permittee shall ensure proper operation of all treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.
- (3) Any residual water<sup>35</sup> produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:
  - (a) Hauled away and legally disposed of; or
  - (b) Applied to the land without runoff; or
  - (c) Discharged to the sanitary sewer system (with permits or authorization); or
  - (d) Treated or filtered to remove bacteria, sediments, nutrients, and meet the limitations set in Table 19 (Discharge Limitations for Dewatering Treatment BMPs), prior to discharge to the MS4.

**Table 19. Discharge Limitations for Dewatering Treatment BMPs<sup>36</sup>**

Parameter	Units	Limitation
Total Suspended Solids	mg/L	100
Turbidity	NTU	50
Oil and Grease	mg/L	10

**i. Streets, Roads, and Parking Facilities Maintenance**

- i. Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:
  - Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.
  - Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.
  - Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.
- ii. Each Permittee shall perform street sweeping of curbed streets according to the following schedule:
  - Priority A: Streets and/or street segments that are designated as Priority A shall be swept at least two times per month.
  - Priority B: Streets and/or street segments that are designated as Priority B shall be swept at least once per month.
  - Priority C: Streets and/or street segments that are designated as Priority C shall be swept as necessary but in no case less than once per year.

<sup>35</sup> See Attachment A.

<sup>36</sup> Technology based effluent limitations.

### iii. Road Reconstruction

Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that the following BMPs be implemented for each project.

- (1) Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall<sup>37</sup> unless required by emergency conditions.
- (2) Install sand bags or gravel bags and filter fabric at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat;
- (3) Prevent the discharge of release agents including soybean oil, other oils, or diesel into the MS4 or receiving waters.
- (4) Prevent non-storm water runoff from water use for the roller and for evaporative cooling of the asphalt.
- (5) Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly.
- (6) Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly.
- (7) Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly.
- (8) Cover the "cold-mix" asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm.
- (9) Cover loads with tarp before haul-off to a storage site, and do not overload trucks.
- (10) Minimize airborne dust by using water spray during grinding.
- (11) Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near MS4 or receiving waters.
- (12) Protect stockpiles with a cover or sediment barriers during a rain.

### iv. Parking Facilities Maintenance

- (1) Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

### j. Emergency Procedures

- i. Each Permittee may conduct repairs of essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order as follows:

---

<sup>37</sup> A probability of precipitation (POP) of 50% is required.

- (1) The Permittee shall abide by all other regulatory requirements, including notification to other agencies as appropriate.
- (2) Where the self-waiver has been invoked, the Permittee shall submit to the Regional Water Board Executive Officer a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality, no later than 30 business days after the situation of emergency has passed.
- (3) Minor repairs of essential public service systems and infrastructure in emergency situations (that can be completed in less than one week) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

**k. Municipal Employee and Contractor Training**

i. Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program, or shall ensure contractors performing privatized/contracted municipal services are appropriately trained to:

- (1) Promote a clear understanding of the potential for activities to pollute storm water.
- (2) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.

Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.

ii. Each Permittee shall, no later than 1 year after Order adoption and annually thereafter before June 30, train all of their employees and contractors who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Training programs shall address:

- (1) The potential for pesticide-related surface water toxicity.
- (2) Proper use, handling, and disposal of pesticides.
- (3) Least toxic methods of pest prevention and control, including IPM.
- (4) Reduction of pesticide use.

iii. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.



## **10. Illicit Connections and Illicit Discharges Elimination Program**

### **a. General**

- i.** Each Permittee shall continue to implement an Illicit Connection and Illicit Discharge Elimination (IC/ID) Program to detect, investigate, and eliminate IC/IDs to the MS4. The IC/ID Program must be implemented in accordance with the requirements and performance measures specified in this Order.
- ii.** As stated in Part VI.A.2 of this Order, each Permittee must have adequate legal authority to prohibit IC/IDs to the MS4 and enable enforcement capabilities to eliminate the source of IC/IDs.
- iii.** Each Permittee's IC/ID Program shall consist of at least the following major program components:
  - (1) Procedures for conducting source investigations for IC/IDs
  - (2) Procedures for eliminating the source of IC/IDs
  - (3) Procedures for public reporting of illicit discharges
  - (4) Spill response plan
  - (5) IC/IDs education and training for Permittee staff

### **b. Illicit Discharge Source Investigation and Elimination**

- i.** Each Permittee shall develop written procedures for conducting investigations to identify the source of all suspected illicit discharges, including procedures to eliminate the discharge once the source is located.
- ii.** At a minimum, each Permittee shall initiate an investigation(s) to identify and locate the source within 72 hours of becoming aware of the illicit discharge.
- iii.** When conducting investigations, each Permittee shall comply with the following:
  - (1) Illicit discharges suspected of being sanitary sewage and/or significantly contaminated shall be investigated first.
  - (2) Each Permittee shall track all investigations to document at a minimum the date(s) the illicit discharge was observed; the results of the investigation; any follow-up of the investigation; and the date the investigation was closed.
  - (3) Each Permittee shall investigate the source of all observed illicit discharges.
- iv.** When taking corrective action to eliminate illicit discharges, each Permittee shall comply with the following:
  - (1) If the source of the illicit discharge has been determined to originate within the Permittee's jurisdiction, the Permittee shall immediately notify the responsible party/parties of the problem, and require the responsible party to initiate all necessary corrective actions to eliminate the illicit discharge.

Upon being notified that the discharge has been eliminated, the Permittee shall conduct a follow-up investigation to verify that the discharge has been eliminated and cleaned-up to the satisfaction of the Permittee(s). Each Permittee shall document its follow-up investigation. Each Permittee may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection, investigation, cleanup and oversight activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy, per Part VI.D.2.

- (2) If the source of the illicit discharge has been determined to originate within an upstream jurisdiction, the Permittee shall notify the upstream jurisdiction and the Regional Water Board within 30 days of such determination and provide all of the information collected regarding efforts to identify its source. Each Permittee may seek recovery and remediation costs from responsible parties or require compensation for the cost of all inspection, investigation, cleanup and oversight activities. Resulting enforcement actions shall follow the program's Progressive Enforcement Policy, per Part VI.D.2.
- (3) If the source of the illicit discharge cannot be traced to a suspected responsible party, affected Permittees shall implement its spill response plan and then initiate a permanent solution as described in section 10.b.v below.

- v. In the event the Permittee is unable to eliminate an ongoing illicit discharge following full execution of its legal authority and in accordance with its Progressive Enforcement Policy, or other circumstances prevent the full elimination of an ongoing illicit discharge, including the inability to find the responsible party/parties, the Permittee shall provide for diversion of the entire flow to the sanitary sewer or provide treatment. In either instance, the Permittee 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.

### **c. Identification and Response to Illicit Connections**

#### **i. Investigation**

Each Permittee, upon discovery or upon receiving a report of a suspected illicit connection, shall initiate an investigation within 21 days, to determine the following: (1) source of the connection, (2) nature and volume of discharge through the connection, and (3) responsible party for the connection.

#### **ii. Elimination**

Each Permittee, upon confirmation of an illicit MS4 connection, shall ensure that the connection is:

- (1) Permitted or documented, provided the connection will only discharge storm water and non-storm water allowed under this Order or other individual or general NPDES Permits/WDRs, or
- (2) Eliminated within 180 days of completion of the investigation, using its formal enforcement authority, if necessary, to eliminate the illicit connection.

**iii. Documentation**

Formal records must be maintained for all illicit connection investigations and the formal enforcement taken to eliminate illicit connections.

**d. Public Reporting of Non-Storm Water Discharges and Spills**

- i. Each Permittee shall promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s through a central contact point, including phone numbers and an internet site for complaints and spill reporting. Each Permittee shall also provide the reporting hotline to Permittee staff to leverage the field staff that has direct contact with the MS4 in detecting and eliminating illicit discharges.
- ii. Each Permittee shall implement the central point of contact and reporting hotline requirements listed in this part in one or more of the following methods:
  - (1) By participating in a County-wide sponsored hotline
  - (2) By participating in one or more Watershed Group sponsored hotlines
  - (3) Or individually within its own jurisdiction
  - (4) The LACFCD shall, in collaboration with the County, continue to maintain the 888-CLEAN-LA hotline and internet site to promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s.
- iii. Each Permittee shall ensure that signage adjacent to open channels, as required in Part F.8.h.vi, include information regarding dumping prohibitions and public reporting of illicit discharges.
- iv. Each Permittee shall develop and maintain written procedures that document how complaint calls are received, documented, and tracked to ensure that all complaints are adequately addressed. The procedures shall be evaluated to determine whether changes or updates are needed to ensure that the procedures accurately document the methods employed by the Permittee. Any identified changes shall be made to the procedures subsequent to the evaluation.
- v. Each Permittee shall maintain documentation of the complaint calls and record the location of the reported spill or IC/ ID and the actions undertaken in response to all IC/ID complaints, including referrals to other agencies.

**e. Spill Response Plan**

- i. Each Permittee shall implement a spill response plan for all sewage and other spills that may discharge into its MS4. The spill response plan shall clearly identify agencies responsible for spill response and cleanup, telephone numbers and e-mail address for contacts, and shall contain at a minimum the following requirements:
  - (1) Coordination with spill response teams throughout all appropriate departments, programs and agencies so that maximum water quality protection is provided.
  - (2) Initiate investigation of all public and employee spill complaints within one business day of receiving the complaint to assess validity.
  - (3) Response to spills for containment within 4 hours of becoming aware of the spill, except where such spills occur on private property, in which case the response should be within 2 hours of gaining legal access to the property.
  - (4) Spills that may endanger health or the environment shall be reported to appropriate public health agencies and the Office of Emergency Services (OES).

**f. Illicit Connection and Illicit Discharge Education and Training**

- i. Each Permittee must continue to implement a training program regarding 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 MS4. Contact information, including the procedure for reporting an illicit discharge, must be readily available to field staff. Training program documents must be available for review by the permitting authority.
  - ii. Each Permittee shall ensure contractors performing privatized/contracted municipal services such as, but not limited to, storm and/or sanitary sewer system inspection and repair, street sweeping, trash pick-up and disposal, and street and right-of-way construction and repair are trained regarding IC/ID identification and reporting. Permittees may provide training or include contractual requirements for IC/ID identification and reporting training. Outside contractors can self-certify, providing they certify they have received all applicable training required in the Permit and have documentation to that effect.
- iii. Each Permittee's training program should address, at a minimum, the following:
  - (1) IC/ID identification, including definitions and examples,
  - (2) investigation,
  - (3) elimination,
  - (4) cleanup,

- (5) reporting, and
- (6) documentation.
- iv. Each Permittee must create a list of applicable positions and contractors which require IC/ID training and ensure that training is provided at least twice during the term of the Order. Each Permittee must maintain documentation of the training activities.
- v. New Permittee staff members must be provided with IC/ID training within 180 days of starting employment.

#### **E. Total Maximum Daily Load Provisions**

1. The provisions of this Part VI.E. implement and are consistent with the assumptions and requirements of all waste load allocations (WLAs) established in TMDLs for which some or all of the Permittees in this Order are responsible.
  - a. Part VI.E of this Order includes provisions that are designed to assure that Permittees achieve WLAs and meet other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges. TMDL provisions are grouped by WMA (WMA) in Attachments L through R.
  - b. The Permittees subject to each TMDL are identified in Attachment K.
  - c. The Permittees shall comply with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).
  - d. A Permittee may comply with water quality-based effluent limitations and receiving water limitations in Attachments L through R using any lawful means.

#### **2. Compliance Determination**

##### **a. General**

- i. A Permittee shall demonstrate compliance at compliance monitoring points established in each TMDL or, if not specified in the TMDL, at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E, Part VI.C.5 (Integrated Watershed Monitoring and Assessment).
- ii. Compliance with water quality-based effluent limitations shall be determined as described in Parts VI.E.2.d and VI.E.2.e, or for trash water quality-based effluent limitations as described in Part VI.E.5.b, or as otherwise set forth in TMDL specific provisions in Attachments L through R.

- iii. Pursuant to Part VI.C, a Permittee may, individually or as part of a watershed-based group, develop and submit for approval by the Regional Water Board Executive Officer a Watershed Management Program that addresses all water quality-based effluent limitations and receiving water limitations to which the Permittee is subject pursuant to established TMDLs.

**b. Commingled Discharges**

- i. A number of the TMDLs establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL.
- ii. In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.
- iii. Where Permittees have commingled discharges to the receiving water, compliance at the outfall to the receiving water or in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart v. below.
- iv. For purposes of compliance determination, each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation(s) at the outfall or receiving water limitation(s) in the target receiving water.
- v. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation or receiving water limitation in any of the following ways:
  - (1) Demonstrate that there is no discharge from the Permittee's MS4 into the applicable receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation; or
  - (2) Demonstrate that the discharge from the Permittee's MS4 is controlled to a level that does not exceed the applicable water quality-based effluent limitation; or
  - (3) For exceedances of bacteria receiving water limitations or water quality-based effluent limitations, demonstrate through a source investigation pursuant to protocols established under California Water Code section 13178 or for exceedances of other receiving water limitations or water quality-based effluent limitations, demonstrate using other accepted source identification protocols, that pollutant sources within the jurisdiction of the Permittee or the Permittee's MS4 have not caused or contributed to the exceedance of the Receiving Water Limitation(s).

**c. Receiving Water Limitations Addressed by a TMDL**

- i. For receiving water limitations in Part V.A. associated with water body-pollutant combinations addressed in a TMDL, Permittees shall achieve compliance with the receiving water limitations in Part V.A. as outlined in this Part VI.E. and Attachments L through R of this Order.
- ii. A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL.
- iii. As long as a Permittee is in compliance with the applicable TMDL requirements in a time schedule order (TSO) issued by the Regional Water Board pursuant to California Water Code sections 13300 and 13385(j)(3), it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO.

**d. Interim Water Quality-Based Effluent Limitations and Receiving Water Limitations**

- i. A Permittee shall be considered in compliance with an applicable interim water quality-based effluent limitation and interim receiving water limitation for a pollutant associated with a specific TMDL if any of the following is demonstrated:
  - (1) There are no violations of the interim water quality-based effluent limitation for the pollutant associated with a specific TMDL at the Permittee's applicable MS4 outfall(s),<sup>38</sup> including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
  - (2) There are no exceedances of the applicable receiving water limitation for the pollutant associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
  - (3) 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 associated with a specific TMDL; or
  - (4) The Permittee has submitted and is fully implementing an approved Watershed Management Program or EWMP pursuant to Part VI.C.
    - (a) To be considered fully implementing an approved Watershed Management Program or EWMP, a Permittee must be implementing

<sup>38</sup> An outfall may include a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary.

all actions consistent with the approved program and applicable compliance schedules, including structural BMPs.

- (b) Structural storm water BMPs or systems of BMPs should be designed and maintained to treat storm water runoff from the 85<sup>th</sup> percentile, 24-hour storm, where feasible and necessary to achieve applicable WQBELs and receiving water limitations, and maintenance records must be up-to-date and available for inspection by the Regional Water Board.
- (c) A Permittee that does not implement the Watershed Management Program in accordance with the milestones and compliance schedules shall demonstrate compliance with its interim water quality-based effluent limitations and/or receiving water limitations pursuant to Part VI.E.2.d.i.(1)-(3), above.
- (d) Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with provisions pertaining to interim WQBELs with compliance deadlines occurring prior to approval of a WMP or EWMP. This subdivision (d) shall not apply to interim trash WQBELs.
  - (1) Provides timely notice of its intent to develop a WMP or EWMP,
  - (2) Meets all interim and final deadlines for development of a WMP or EWMP,
  - (3) For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to the impairment(s) addressed by the TMDL(s), and
  - (4) Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.
- e. Final Water Quality-based Effluent Limitations and/or Receiving Water Limitations**
  - i. A Permittee shall be deemed in compliance with an applicable final water quality-based effluent limitation and final receiving water limitation for the pollutant(s) associated with a specific TMDL if any of the following is demonstrated:



- (1) There are no violations of the final water quality-based effluent limitation for the specific pollutant at the Permittee's applicable MS4 outfall(s)<sup>39</sup>;
- (2) There are no exceedances of applicable receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
- (3) 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; or
- (4) In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85<sup>th</sup> percentile, 24-hour event is retained for the drainage area tributary to the applicable receiving water. This provision (4) shall not apply to final trash WQBELs.

### **3. USEPA Established TMDLs**

TMDLs established by the USEPA, to which Permittees are subject, do not contain an implementation plan adopted pursuant to California Water Code section 13242. However, USEPA has included implementation recommendations as part of these TMDLs. In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will be effective in achieving compliance with USEPA established numeric WLAs. The Regional Water Board may, at its discretion, revisit this decision within the term of this Order or in a future permit, as more information is developed to support the inclusion of numeric water quality based effluent limitations.

- a. Each Permittee shall propose BMPs to achieve the WLAs contained in the applicable USEPA established TMDL(s), and a schedule for implementing the BMPs that is as short as possible, in a Watershed Management Program or EWMP.
- b. Each Permittee may either individually submit a Watershed Management Program, or may jointly submit a WMP or EWMP with other Permittees subject to the WLAs contained in the USEPA established TMDL.
- c. At a minimum, each Permittee shall include the following information in its Watershed Management Program or EWMP, relevant to each applicable USEPA established TMDL:
  - i. Available data demonstrating the current quality of the Permittee's MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;

---

<sup>39</sup> Ibid.

- ii. A detailed description of BMPs that have been implemented, and/or are currently being implemented by the Permittee to achieve the WLA(s), if any;
  - iii. A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable WLA(s);
  - iv. A demonstration that the time schedule requested is as short as possible, taking into account the time since USEPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WLA(s);
    - (1) For the Malibu Creek Nutrient TMDL established by USEPA in 2003, in no case shall the time schedule to achieve the final numeric WLAs exceed five years from the effective date of this Order; and
  - v. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and numeric milestones and the date(s) for their achievement.
- d. Each Permittee subject to a WLA in a TMDL established by USEPA shall submit a draft of a Watershed Management Program or EWMP to the Regional Water Board Executive Officer for approval per the schedule Part VI.C.4.
  - e. If a Permittee does not submit a Watershed Management Program, or the plan is determined to be inadequate by the Regional Water Board Executive Officer and the Permittee does not make the necessary revisions within 90 days of written notification that plan is inadequate, the Permittee shall be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the MRP (Attachment E) for this Order.

#### **4. State Adopted TMDLs where Final Compliance Deadlines have Passed**

- a. Permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule.
- b. Where a Permittee believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, a Permittee may within 45 days of Order adoption request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.
- c. Permittees may either individually request a TSO, or may jointly request a TSO with all Permittees subject to the water quality-based effluent limitations and/or receiving water limitations, to implement the WLAs in the state-adopted TMDL.

- d. At a minimum, a request for a time schedule order shall include the following:
- i. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
  - ii. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
  - iii. Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations;
  - iv. A detailed time schedule of specific actions the Permittee will take in order to achieve the water quality-based effluent limitations and/or receiving water limitations;
  - v. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and
  - vi. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement. The interim requirements shall include both of the following:
    - (1) Effluent limitation(s) for the pollutant(s) of concern; and
    - (2) Actions and milestones leading to compliance with the effluent limitation(s).

## **5. Water Quality-Based Effluent Limitations for Trash**

Permittees assigned a Waste Load Allocation in a trash TMDL shall comply as set forth below.

- a. **Effluent Limitations:** Permittees shall comply with the interim and final water quality-based effluent limitations for trash set forth in Attachments L through R for the following Trash TMDLs:
- i. Lake Elizabeth Trash TMDL (Attachment L)
  - ii. Santa Monica Bay Nearshore and Offshore Debris TMDL (Attachment M)
  - iii. Malibu Creek Watershed Trash TMDL (Attachment M)
  - iv. Ballona Creek Trash TMDL (Attachment M)
  - v. Machado Lake Trash TMDL (Attachment N)
  - vi. Los Angeles River Trash TMDL (Attachment O)

- vii. Peck Road Park Lake Trash TMDL (Attachment O)
- viii. Echo Park Lake Trash TMDL (Attachment O)
- ix. Legg Lake Trash TMDL (Attachment O)

**b. Compliance**

- i. Pursuant to California Water Code section 13360(a), Permittees may comply with the trash effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, *institutional controls*, or *minimum frequency of assessment and collection*, as described below, and any combination of these may be employed to achieve compliance:
  - (1) Full Capture Systems:
    - (a) The Basin Plan authorizes the Regional Water Board Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System."<sup>40</sup>
    - (b) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of paragraph (c), immediately below, and any conditions in the certification, continue to be met.
    - (c) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdictional areas until all areas draining to Lake Elizabeth, Santa Monica Bay, Malibu Creek, Ballona Creek, Machado Lake, the Los Angeles River system, Legg Lake, Peck Road Park Lake, and/or Echo Park Lake are addressed. For purposes of this Order, attainment of the effluent limitations shall be conclusively presumed for any drainage area to Lake Elizabeth, Santa Monica Bay, Malibu Creek (and its tributaries), Ballona Creek (and its tributaries), Machado Lake, the Los Angeles River (and its tributaries), Legg Lake, Peck Road Park Lake, and/or Echo Park Lake where certified *full capture systems* treat all drainage from the area, provided that the *full capture systems* are adequately sized and maintained, and that maintenance records are up-to-date and available for inspection by the Regional Water Board.

<sup>40</sup> The Regional Water Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device. See August 3, 2004 Los Angeles Regional Water Quality Control Board Memorandum titled "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System."

- (i) A Permittee shall be deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified *full capture systems* as described in paragraph (1)(c).
  - (ii) A Permittee shall be deemed in compliance with its interim effluent limitations, where applicable:
    - 1. By demonstrating that *full capture systems* treat the percentage of drainage areas in the watershed that corresponds to the required trash abatement.
    - 2. Alternatively, a Permittee may propose a schedule for installation of *full capture systems* in areas under its jurisdiction and/or authority within a given watershed, targeting first the areas of greatest trash generation, for the Executive Officer's approval. The Executive Officer shall not approve any such schedule that does not result in timely compliance with the final effluent limitations, consistent with the established TMDL implementation schedule and applicable State policies. A Permittee shall be deemed in compliance with its interim effluent limitations provided it is fully in compliance with any such approved schedule.
- (2) Partial Capture Devices and Institutional Controls: Permittees may comply with their interim and final effluent limitations through the installation of *partial capture devices* and the application of *institutional controls*.<sup>41</sup>
- (a) Trash discharges from areas serviced solely by *partial capture devices* may be estimated based on demonstrated performance of the device(s) in the implementing area.<sup>42</sup> That is, trash reduction is equivalent to the *partial capture devices'* trash removal efficiency multiplied by the percentage of drainage area serviced by the devices.
  - (b) Except as provided in subdivision (c), immediately below, trash discharges from areas addressed by *institutional controls* and/or *partial capture devices* (where site-specific performance data is not available) shall be calculated using a mass balance approach, based on the daily generation rate (DGR) for a representative area.<sup>43</sup> The DGR shall be determined from direct measurement of trash deposited in the drainage area during any thirty-day period between June 22<sup>nd</sup> and September 22<sup>nd</sup> exclusive of rain events<sup>44</sup>, and shall be re-calculated every year thereafter unless a less frequent period for recalculation is approved by the Regional Water Board Executive Officer. The DGR

<sup>41</sup> While interim effluent limitations may be complied with using *partial capture devices*, compliance with final effluent limitations cannot be achieved with the exclusive use of *partial capture devices*.

<sup>42</sup> Performance shall be demonstrated under different conditions (e.g. low to high trash loading).

<sup>43</sup> The area(s) should be representative of the land uses and activities within the Permittees' authority and shall be approved by the Executive Officer prior to the 30-day collection period.

<sup>44</sup> Provided no special events are scheduled that may affect the representative nature of that collection period.

shall be calculated as the total amount of trash collected during this period divided by the length of the collection period.

**$DGR = (\text{Amount of trash collected during a 30-day collection period}^{45} / (30 \text{ days}))$**

The DGR for the applicable area under the Permittees' jurisdiction and/or authority shall be extrapolated from that of the representative drainage area(s). A mass balance equation shall be used to estimate the amount of trash discharged during a storm event.<sup>46</sup> The *Storm Event Trash Discharge* for a given rain event in the Permittee's drainage area shall be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the amount of any trash recovered in the catch basins.<sup>47</sup> For each day of a storm event that generates precipitation greater than 0.25 inch, the Permittee shall calculate a *Storm Event Trash Discharge*.

**$\text{Storm Event Trash Discharge} = [(\text{Days since last street sweeping} * DGR)] - [\text{Amount of trash recovered from catch basins}]^{48}$**

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

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

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

(3) Combined Compliance Approaches:

Permittees may comply with their interim and final effluent limitations through a combination of *full capture systems*, *partial capture devices*, and *institutional controls*. Where a Permittee relies on a combination of approaches, it shall demonstrate compliance with the interim and final effluent limitations as specified in (1)(c) in areas where *full capture systems* are installed and as specified in (2)(a) or (2)(b), as appropriate, in areas where *partial capture devices* and *institutional controls* are applied.

(4) Minimum Frequency of Assessment and Collection Approach:

If allowed in a trash TMDL and approved by the Executive Officer, a Permittee may alternatively comply with its final effluent limitations by

<sup>45</sup> Between June 22<sup>nd</sup> and September 22<sup>nd</sup>

<sup>46</sup> Amount of trash shall refer to the uncompressed volume (in gallons) or drip-dry weight (in pounds) of trash collected.

<sup>47</sup> Any negative values shall be considered to represent a zero discharge.

<sup>48</sup> When more than one storm event occurs prior to the next street sweeping the discharge shall be calculated from the date of the last assessment.

## **ATTACHMENT A – DEFINITIONS**

The following are definitions for terms in this Order:

### **Adverse Impact**

A detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

### **Anti-degradation Policies**

Laws, policies and regulations set forth and state and federal statutes and regulations e.g., *Statement of Policy with Respect to Maintaining High Quality Water in California*, State Board Resolution No. 68-16; 40 CFR section 131.12.

### **Applicable Standards and Limitations**

All State, interstate, and federal standards are limitations to which a “discharge” or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, “best management practices,” and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

### **Areas of Special Biological Significance (ASBS)**

All those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the mean high tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobaths, whichever distance is greater; thence northwesterly following the 100 foot isobaths or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

### **Arithmetic Mean ( $\mu$ )**

Also called the average, is the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic mean is calculated as follows:

$$\text{Arithmetic mean} = \mu = \Sigma x / n$$

where:

$\Sigma x$  is the sum of the measured ambient water concentrations, and  $n$  is the number of samples.

### **Authorized Discharge**

Any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

### **Authorized Non-Storm Water Discharge**

Authorized non-storm water discharges are discharges that are not composed entirely of storm water and that are either: (1) separately regulated by an individual or general NPDES permit and allowed to discharge to the MS4 when in compliance with all NPDES permit conditions; (2)

authorized by USEPA<sup>1</sup> pursuant to sections 104(a) or 104(b) of CERCLA that either (i) will comply with water quality standards as applicable or relevant and appropriate requirements ("ARARs") under section 121(d)(2) of CERCLA or (ii) are subject to (a) a written waiver of ARARs by USEPA pursuant to section 121(d)(4) of CERCLA or (b) a written determination by USEPA that compliance with ARARs is not practicable considering the exigencies of the situation, pursuant to 40 CFR section 300.415(j); or (3) necessary for emergency responses purposes, including flows from emergency fire fighting activities.

#### **Automotive Service Facilities**

A facility that is categorized in any one of the following Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

#### **Average Monthly Effluent Limitation (AMEL)**

The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

#### **Bacteria Total Maximum Daily Load (TMDL) Dry Weather**

Defined in the Bacteria TMDLs as those days with less than 0.1 inch of rainfall and those days occurring more than 3 days after a rain.

#### **Bacteria Total Maximum Daily Load (TMDL) Wet Weather**

Defined in the Bacteria TMDLs as a day with 0.1 inch or more of rain and 3 days following the rain event.

#### **Baseline Waste Load Allocation**

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

#### **Basin Plan**

The Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Water Board on June 13, 1994 and subsequent amendments.

#### **Beneficial Uses**

The existing or potential uses of receiving waters in the permit area as designated by the Regional Water Board in the Basin Plan.

---

<sup>1</sup> These typically include short-term, high volume discharges resulting from the development or redevelopment of groundwater extraction wells, or USEPA or State-required compliance testing of potable water treatment plants, as part of a USEPA authorized groundwater remediation action under CERCLA.



### **Best Management Practices (BMPs)**

BMPs are practices or physical devices or systems designed to prevent or reduce pollutant loading from storm water or non-storm water discharges to receiving waters, or designed to reduce the volume of storm water or non-storm water discharged to the receiving water.

### **Bioaccumulative**

Those substances taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

### **Biofiltration**

A LID BMP that reduces storm water pollutant discharges by intercepting rainfall on vegetative canopy, and through incidental infiltration and/or evapotranspiration, and filtration. As described in the *Ventura County Technical Guidance Manual*, studies have demonstrated that biofiltration of 1.5 times the storm water quality design volume (SWQDV) provides approximately equivalent or greater reductions in pollutant loading when compared to bioretention or infiltration of the SWQDV.<sup>2</sup> Incidental infiltration is an important factor in achieving the required pollutant load reduction. Therefore, the term "biofiltration" as used in this Order is defined to include only systems designed to facilitate incidental infiltration or achieve the equivalent pollutant reduction as biofiltration BMPs with an underdrain (subject to Executive Officer approval). Biofiltration BMPs include bioretention systems with an underdrain and bioswales.

### **Bioretention**

A LID BMP that reduces storm water runoff by intercepting rainfall on vegetative canopy, and through evapotranspiration and infiltration. The bioretention system typically includes a minimum 2-foot top layer of a specified soil and compost mixture underlain by a gravel-filled temporary storage pit dug into the *in-situ* soil. As defined in this Order, a bioretention BMP may be designed with an overflow drain, but may not include an underdrain. When a bioretention BMP is designed or constructed with an underdrain it is regulated in this Order as biofiltration.

### **Bioswale**

A LID BMP consisting of a shallow channel lined with grass or other dense, low-growing vegetation. Bioswales are designed to collect storm water runoff and to achieve a uniform sheet flow through the dense vegetation for a period of several minutes.

### **Carcinogenic**

Pollutants are substances that are known to cause cancer in living organisms.

### **Coefficient of Variation (CV)**

CV is a measure of the data variability and is calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

---

<sup>2</sup> Geosyntec Consultants and Larry Walker Associates. 2011. *Ventura County Technical Guidance Manual for Stormwater Quality and Control Measures, Manual Update 2011. Appendix D*. Prepared for the Ventura Countywide Stormwater Quality Management Program. July 13, 2011. pp. D-6 – D-15.

### **Commercial Development**

Any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities; mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

### **Commercial Malls**

Any development on private land comprised of one or more buildings forming a complex of stores which sells various merchandise, with interconnecting walkways enabling visitors to easily walk from store to store, along with parking area(s). A commercial mall includes, but is not limited to: mini-malls, strip malls, other retail complexes, and enclosed shopping malls or shopping centers.

### **Conditionally Exempt Essential Non-Storm Water Discharge**

Conditionally exempt essential non-storm water discharges are certain categories of discharges that are not composed entirely of storm water and that are allowed by the Regional Water Board to discharge to the MS4, if in compliance with all specified requirements; are not otherwise regulated by an individual or general NPDES permit; and are essential public services that are directly or indirectly required by other State or federal statute and/or regulation. These include non-storm water discharges from drinking water supplier distribution system releases and non-emergency fire fighting activities. Conditionally exempt essential non-storm water discharges may contain minimal amounts of pollutants, however, when in compliance with industry standard BMPs and control measures, do not result in significant environmental effects. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

### **Conditionally Exempt Non-Storm Water Discharge**

Conditionally exempt non-storm water discharges are certain categories of discharges that are not composed entirely of storm water and that are either not sources of pollutants or may contain only minimal amounts of pollutants and when in compliance with specified BMPs do not result in significant environmental effects. (See 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

### **Construction Activity**

Construction activity includes any construction or demolition activity, clearing, grading, grubbing, or excavation or any other activity that results in land disturbance. Construction does not include emergency construction activities required to immediately protect public health and safety or routine maintenance activities required to maintain the integrity of structures by performing minor repair and restoration work, maintain the original line and grade, hydraulic capacity, or original purposes of the facility. See "Routine Maintenance" definition for further explanation. Where clearing, grading or excavating of underlying soil takes place during a repaving operation, State General Construction Permit coverage is required if more than one acre is disturbed or the activities are part of a larger plan.

### **Control**

To minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

### **Daily Discharge**

Daily Discharge is defined as either: (1) the total mass of the constituent discharged over the calendar day (12:00 am through 11:59 pm) or any 24-hour period that reasonably **represents** a calendar day for purposes of sampling (as specified in the permit), for a constituent with limitations expressed in units of mass or; (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g., concentration).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period will be considered as the result for the calendar day in which the 24-hour period ends.

### **Daily Generation Rate (DGR)**

The estimated amount of trash deposited within a representative drainage area during a 24-hour period, derived from the amount of trash collected from streets and catch basins in the area over a 30-day period.

### **Dechlorinated/Debrominated Swimming Pool Discharge**

Swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

### **Detected, but Not Quantified (DNQ)**

DNQ are those sample results less than the RL, but greater than or equal to the laboratory's MDL.

### **Development**

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.

### **Directly Adjacent**

Situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

### **Director**

The Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

### **Discharge**

When used without qualification the “discharge of a pollutant.”

### **Discharging Directly**

Outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

### **Discharge of a Pollutant**

Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source” or, any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

### **Disturbed Area**

An area that is altered as a result of clearing, grading, and/or excavation.

### **Drinking Water Supplier Distribution Systems Releases**

Sources of flows from drinking water supplier storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance. For the purposes of this Order, drinking water supplier distribution system releases include treated and raw water (from raw water pipelines, reservoirs, storage tanks, etc.) that are dedicated for drinking water supply.

### **Effective Impervious Area (EIA)**

EIA is the portion of the surface area that is hydrologically connected to a drainage system via a hardened conveyance or impervious surface without any intervening median to mitigate the flow volume.

### **Effluent Concentration Allowance (ECA)**

ECA is a value derived from the water quality criterion/objective, dilution credit, and ambient background concentration that is used, in conjunction with the coefficient of variation for the effluent monitoring data, to calculate a long-term average (LTA) discharge concentration. The ECA has the same meaning as waste load allocation (WLA) as used in USEPA guidance (Technical Support Document For Water Quality-based Toxics Control, March 1991, second printing, EPA/505/2-90-001).

### **Effluent Limitation**

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. (40 CFR § 122.2).

### **Enclosed Bays**

Enclosed Bays means indentations along the coast that enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

### **Environmentally Sensitive Areas (ESAs)**

An area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976) and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

### **Estimated Chemical Concentration**

The estimated chemical concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

### **Estuaries**

Estuaries means waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuarine waters included, but are not limited to, the Sacramento-San Joaquin Delta, as defined in California Water Code section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay rivers. Estuaries do not include inland surface waters or ocean waters.

### **Existing Discharger**

Any discharger that is not a new discharger. An existing discharger includes an "increasing discharger" (i.e., any existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its permitted discharge after the effective date of this Order).

### **Flow-through treatment BMPs**

Flow-through treatment BMPs include modular, vault type "high flow biotreatment" devices contained within an impervious vault with an underdrain or designed with an impervious liner and an underdrain.

### **Full Capture System**

Any single device or series of devices, certified by the Executive Officer, that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate  $Q$  resulting from a one-year, one-hour storm in the sub-drainage area. The Rational Equation is used to compute the peak flow rate:

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

Where:

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

$C$  = runoff coefficient (dimensionless);

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

$A$  = sub-drainage area (acres).

### **General Construction Activities Storm Water Permit (GCASP)**

The general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

### **General Industrial Activities Storm Water Permit (GIASP)**

The general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

### **Green Roof**

A LID BMP using planter boxes and vegetation to intercept rainfall on the roof surface. Rainfall is intercepted by vegetation leaves and through evapotranspiration. Green roofs may be designed as either a bioretention BMP or as a biofiltration BMP. To receive credit as a bioretention BMP, the green roof system planting medium shall be of sufficient depth to provide capacity within the pore space volume to contain the design storm depth and may not be designed or constructed with an underdrain.

### **Hillside**

Property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

### **Hydrologic Unit Code (HUC)**

A standardized watershed classification system in which each hydrologic unit is identified by a unique hydrologic unit code (HUC). The HUC may consist of an eight (8) to twelve (12) digit number. The 8-digit HUC identifies an area based on four levels of classification: region, sub-region, hydrologic basin, and hydrologic sub-basin. The Watershed Boundary Dataset includes the 12-digit HUC delineation, which further divides each hydrologic unit into watersheds and sub-watersheds based on scientific information and not administrative boundaries. The Watershed Boundary Dataset is the highest resolution and the most detailed

delineation of the watershed boundaries. The mapping precision has been improved to a scale of 1:24,000.

**Illicit Connection**

Any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

**Illicit Discharge**

Any discharge into the MS4 or from the MS4 into a receiving water that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes any non-storm water discharge, except authorized non-storm water discharges; conditionally exempt non-storm water discharges; and non-storm water discharges resulting from natural flows specifically identified in Part III.A.1.d.

**Illicit Disposal**

Any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

**Improved drainage system**

An improved drainage system is a drainage system that has been channelized or armored. The clearing or dredging of a natural drainage system does not cause the system to be classified as an improved drainage system.

**Industrial/Commercial Facility**

Any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by either the Standard Industrial Classifications (SIC) or the North American Industry Classification System (NAICS). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

**Industrial Park**

A land development that is set aside for industrial development. Industrial parks are usually located close to transport facilities, especially where more than one transport modalities coincide: highways, railroads, airports, and navigable rivers. It includes office parks, which have offices and light industry.

**Infiltration BMP**

A LID BMP that reduces storm water runoff by capturing and infiltrating the runoff into in-situ soils or amended on-site soils. Examples of infiltration BMPs include infiltration basins, dry wells, and pervious pavement.<sup>3</sup>

**Inland Surface Waters**

All surface waters of the State that do not include the ocean, enclosed bays, or estuaries.

<sup>3</sup> Some types of infiltration BMPs such as dry wells, may meet the definition of a Class V, deep well injection facility and may be subject to permitting under U.S. EPA requirements.

### **Inspection**

Entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);
8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Water Board Resolution No. 98-08, County and municipal ordinances, and the SQMP.

### **Instantaneous Maximum Effluent Limitation**

The highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

### **Instantaneous Minimum Effluent Limitation**

The lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

### **Institutional Controls**

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

**Integrated Pest Management (IPM)** is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties.

### **Large Municipal Separate Storm Sewer System (MS4)**

All MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Water Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

### **Local SWPPP**

The Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.



### **Low Impact Development (LID)**

LID consists of building and landscape features designed to retain or filter storm water runoff.

### **Major Outfall**

Major municipal separate storm sewer outfall (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more). (40 CFR § 122.26(b)(5))

### **Maximum Daily Effluent Limitation (MDEL)**

The highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

### **Maximum Extent Practicable (MEP)**

In selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to the maximum extent practicable. This means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive. The following factors may be useful to consider:

1. Effectiveness: Will the BMP address a pollutant of concern?
2. Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?
3. Public acceptance: Does the BMP have public support?
4. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?
5. Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc.?

After selecting a menu of BMPs, it is of course the responsibility of the discharger to insure that all BMPs are implemented.

### **Median**

The middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements ( $n$ ) is odd, then the median =  $X_{(n+1)/2}$ . If  $n$  is even, then the median =  $(X_{n/2} + X_{(n/2)+1})/2$  (i.e., the midpoint between the  $n/2$  and  $n/2+1$ ).

**Method Detection Limit (MDL)**

MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR Part 136, Attachment B (revised as of July 3, 1999).

**Minimum Level (ML)**

ML is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

**Municipal Separate Storm Sewer System (MS4)**

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2.

(40 CFR § 122.26(b)(8))

**National Pollutant Discharge Elimination System (NPDES)**

The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an “approved program.”

**Natural Drainage System**

A natural drainage system is a drainage system that has not been improved (e.g., channelized or armored). The clearing or dredging of a natural drainage system does not cause the system to be classified as an improved drainage system.

**New Development**

Land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

### **Non-Storm Water Discharge**

Any discharge into the MS4 or from the MS4 into a receiving water that is not composed entirely of storm water.

### **Not Detected (ND)**

Sample results which are less than the laboratory's MDL.

### **Nuisance**

Anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

### **Ocean Waters**

The territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Board's California Ocean Plan.

### **Outfall**

A point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances with connect segments of the same stream or other waters of the United States and are used to convey waters of the United States. (40 CFR § 122.26(b)(9))

### **Parking Lot**

Land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

### **Partial Capture Device**

Any structural trash control device that has not been certified by the Executive Officer as meeting the "full capture" performance requirements.

### **Permittee(s)**

Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San

Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

### **Persistent Pollutants**

Persistent pollutants are substances for which degradation or decomposition in the environment is nonexistent or very slow.

### **Planning Priority Projects**

Those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces
7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
  - a) Vehicle or equipment fueling areas;
  - b) Vehicle or equipment maintenance areas, including washing and repair;
  - c) Commercial or industrial waste handling or storage;
  - d) Outdoor handling or storage of hazardous materials;
  - e) Outdoor manufacturing areas;
  - f) Outdoor food handling or processing;
  - g) Outdoor animal care, confinement, or slaughter; or
  - h) Outdoor horticulture activities.

### **Point Source**

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (40 CFR § 122.2)

### **Pollutant Minimization Program (PMP)**

PMP means waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses. The goal of the PMP shall be to reduce

all potential sources of a priority pollutant(s) through pollutant minimization (control) strategies, including pollution prevention measures as appropriate, to maintain the effluent concentration at or below the water quality-based effluent limitation. Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. The Regional Water Board may consider cost effectiveness when establishing the requirements of a PMP. The completion and implementation of a Pollution Prevention Plan, if required pursuant to California Water Code section 13263.3(d), shall be considered to fulfill the PMP requirements.

### **Pollutants**

Those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373

### **Pollution Prevention**

Pollution Prevention means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product reformulation (as defined in California Water Code Section 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State or Regional Water Board.

### **Potable Water**

Water that meets the drinking water standards of the US Environmental Protection Agency.

### **Project**

All development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

### **Rain Event**

Any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

### **Rainfall Harvest and Use**

Rainfall harvest and use is an LID BMP system designed to capture runoff, typically from a roof but can also include runoff capture from elsewhere within the site, and to provide for temporary storage until the harvested water can be used for irrigation or non-potable uses. The harvested water may also be used for potable water uses if the system includes disinfection treatment and is approved for such use by the local building department.

### **Rare, Threatened, or Endangered Species (RARE)**

A beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

### **Raw Water**

Water that is taken from the environment by drinking water suppliers with the intent to subsequently treat or purify it to produce potable water. Raw water does not include

wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

### **Receiving Water**

A "water of the United States" into which waste and/or pollutants are or may be discharged.

### **Receiving Water Limitation**

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

### **Redevelopment**

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.

### **Regional Administrator**

The Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

### **Reporting Level (RL)**

RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Regional Water Board either from Appendix 4 of the State Implementation Policy (SIP) in accordance with Section 2.4.2 of the SIP or established in accordance with Section 2.4.3 of the SIP. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

### **Residual Water**

In the context of this Order, water remaining in a structural BMP subsequent to the drawdown or drainage period. The residual water typically contains high concentration(s) of pollutants.

### **Restaurant**

A facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

### **Retail Gasoline Outlet**

Any facility engaged in selling gasoline and lubricating oils:

### **Routine Maintenance**

Routine maintenance projects include, but are not limited to projects conducted to:

1. Maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
2. Perform as needed restoration work to preserve the original design grade, integrity and hydraulic capacity of flood control facilities.
3. Includes road shoulder work, regrading dirt or gravel roadways and shoulders and performing ditch cleanouts.
4. Update existing lines\* and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
5. Repair leaks

Routine maintenance does not include construction of new\*\* lines or facilities resulting from compliance with applicable codes, standards and regulations.

\* Update existing lines includes replacing existing lines with new materials or pipes.

\*\* New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

### **Runoff**

Any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

### **Screening**

Using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

### **Sidewalk Rinsing**

Means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Water Board Resolution No. 98-08.

### **Significant Ecological Areas (SEAs)**

An area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.

Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.

3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.
4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.

### **Significant Natural Area (SNA)**

An area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at <ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/>. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state

### **Site**

The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

### **Source Control BMP**

Any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

### **Source of Drinking Water**

Any water designated as municipal or domestic supply (MUN) in a Regional Water Board Basin Plan.

### **SQMP**

The Los Angeles Countywide Stormwater Quality Management Program.

### **Standard Deviation ( $\sigma$ )**

Standard Deviation is a measure of variability that is calculated as follows:

$$\sigma = \left( \frac{\sum[(x - \mu)^2]}{(n - 1)} \right)^{0.5}$$

where:

x is the observed value;

$\mu$  is the arithmetic mean of the observed values; and

n is the number of samples.



**State Storm Water Pollution Prevention Plan (State SWPPP)**

A plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

**Storm Water**

Storm water runoff, snow melt runoff, and surface runoff and drainage related to precipitation events (pursuant to 40 CFR § 122.26(b)(13); 55 Fed. Reg. 47990, 47995 (Nov. 16, 1990)).

**Storm Water Discharge Associated with Industrial Activity**

Industrial discharge as defined in 40 CFR 122.26(b)(14).

**Stormwater Quality Management Program**

The Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

**Structural BMP**

Any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

**SUSMP**

The Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

**Total Maximum Daily Load (TMDL)**

The sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

**Toxicity Identification Evaluation (TIE)**

A set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

**Toxicity Reduction Evaluation (TRE)**

TRE is a study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate. (A TIE is a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.)

### **Trash Excluders**

Any structural trash control device that prevents the discharge of trash to the storm drain system or to receiving waters. A trash exclude may or may not be certified by the Executive Officer as meeting the "full capture" performance requirements.

### **Treatment**

The application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

### **Treatment Control BMP**

Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

### **Unconfined ground water infiltration**

Water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

### **Uncontaminated Ground Water Infiltration**

Water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (See 40 CFR § 35.2005(20).)

### **USEPA Phase I Facilities**

Facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

- i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
- ii. manufacturing facilities
- iii. oil and gas/mining facilities
- iv. hazardous waste treatment, storage, or disposal facilities
- v. landfills, land application sites, and open dumps
- vi. recycling facilities
- vii. steam electric power generating facilities
- viii. transportation facilities
- ix. sewage of wastewater treatment works
- x. light manufacturing facilities

### **Vehicle Maintenance/Material Storage Facilities/Corporation Yards**

Any Permittee owned or operated facility or portion thereof that:

- i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
- ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;
- iii. Performs maintenance and/or repair of heavy industrial machinery/equipment; and

- iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control, and Countermeasures (SPCC) plan.

#### **Water Quality-based Effluent Limitation**

Any restriction imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from point sources to waters of the U.S. necessary to achieve a water quality standard.

#### **Waters of the State**

Any surface water or groundwater, including saline waters, within the boundaries of the state.

#### **Waters of the United States or Waters of the U.S.**

- a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- b. All interstate waters, including interstate "wetlands";
- c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  3. Which are used or could be used for industrial purposes by industries in interstate commerce;
- d. All impoundments of waters otherwise defined as waters of the United States under this definition;
- e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- f. The territorial sea; and
- g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR section 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

#### **Wet Season**

The calendar period beginning October 1 through April 15.

## ACRONYMS AND ABBREVIATIONS

AMEL	Average Monthly Effluent Limitation
ASBS	Areas of Special Biological Significance
B	Background Concentration
BAT	Best Available Technology Economically Achievable
Basin Plan	<i>Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties</i>
BCT	Best Conventional Pollutant Control Technology
BMP	Best Management Practices
BMPP	Best Management Practices Plan
BPJ	Best Professional Judgment
BOD	Biochemical Oxygen Demand 5-day @ 20 °C
BPT	Best Practicable Treatment Control Technology
C	Water Quality Objective
CCR	California Code of Regulations
CEEIN	California Environmental Education Interagency Network
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CTR	California Toxics Rule
CV	Coefficient of Variation
CWA	Clean Water Act
CWC	California Water Code
Discharger	Los Angeles County MS4 Permittees
DMR	Discharge Monitoring Report
DNQ	Detected But Not Quantified
ELAP	California Department of Public Health Environmental Laboratory Accreditation Program
ELG	Effluent Limitations, Guidelines and Standards
Ep	Erosion potential
ESCP	Erosion and Sediment Control Plan
EWMP	Enhanced Watershed Management Program
Facility	Los Angeles County MS4s
GIS	Geographical Information System
gpd	gallons per day
HUC	Hydrologic Unit Code
IC	Inhibition Coefficient
IC <sub>15</sub>	Concentration at which the organism is 15% inhibited
IC <sub>25</sub>	Concentration at which the organism is 25% inhibited
IC <sub>40</sub>	Concentration at which the organism is 40% inhibited
IC <sub>50</sub>	Concentration at which the organism is 50% inhibited
IC/ID	Illicit Connection and Illicit Discharge Elimination
IPM	Integrated Pest Management
LA	Load Allocations
LID	Low Impact Development
LOEC	Lowest Observed Effect Concentration
LUPs	Linear Underground/Overhead Projects

µg/L	micrograms per Liter
MCM	Minimum Control Measure
mg/L	milligrams per Liter
MDEL	Maximum Daily Effluent Limitation
MEC	Maximum Effluent Concentration
MGD	Million Gallons Per Day
ML	Minimum Level
MRP	Monitoring and Reporting Program
MS4	Municipal Separate Storm Sewer System
NAICS	North American Industry Classification System
ND	Not Detected
NOEC	No Observable Effect Concentration
NPDES	National Pollutant Discharge Elimination System
NSPS	New Source Performance Standards
NTR	National Toxics Rule
OAL	Office of Administrative Law
PIPP	Public Information and Participation Program
PMP	Pollutant Minimization Plan
POTW	Publicly Owned Treatment Works
QA	Quality Assurance
QA/QC	Quality Assurance/Quality Control
QSD	Qualified SWPPP Developer
QSP	Qualified SWPPP Practitioner
Ocean Plan	<i>Water Quality Control Plan for Ocean Waters of California</i>
RAP	Reasonable Assurance Program
REAP	Rain Event Action Plan
Regional Water Board	California Regional Water Quality Control Board, Los Angeles Region
RGOs	Retail Gasoline Outlets
RPA	Reasonable Potential Analysis
SCP	Spill Contingency Plan
SEA	Significant Ecological Area
SIC	Standard Industrial Classification
SIP	State Implementation Policy ( <i>Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i> )
SMR	Self Monitoring Reports
State Water Board	California State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
SWQDv	Storm Water Quality Design Volume
SWQPA	State Water Quality Protected Area
TAC	Test Acceptability Criteria
Thermal Plan	<i>Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California</i>
TIE	Toxicity Identification Evaluation
TMDL	Total Maximum Daily Load

TOC	Total Organic Carbon
TRE	Toxicity Reduction Evaluation
TSD	Technical Support Document
TSS	Total Suspended Solid
TU <sub>c</sub>	Chronic Toxicity Unit
USEPA	United States Environmental Protection Agency
WDR	Waste Discharge Requirements
WDID	Waste Discharge Identification
WET	Whole Effluent Toxicity
WLA	Waste Load Allocations
WMA	Watershed Management Area
WMP	Watershed Management Program
WQBELs	Water Quality-Based Effluent Limitations
WQS	Water Quality Standards
%	Percent

**ATTACHMENT B – WATERSHED MANAGEMENT AREA MAPS**

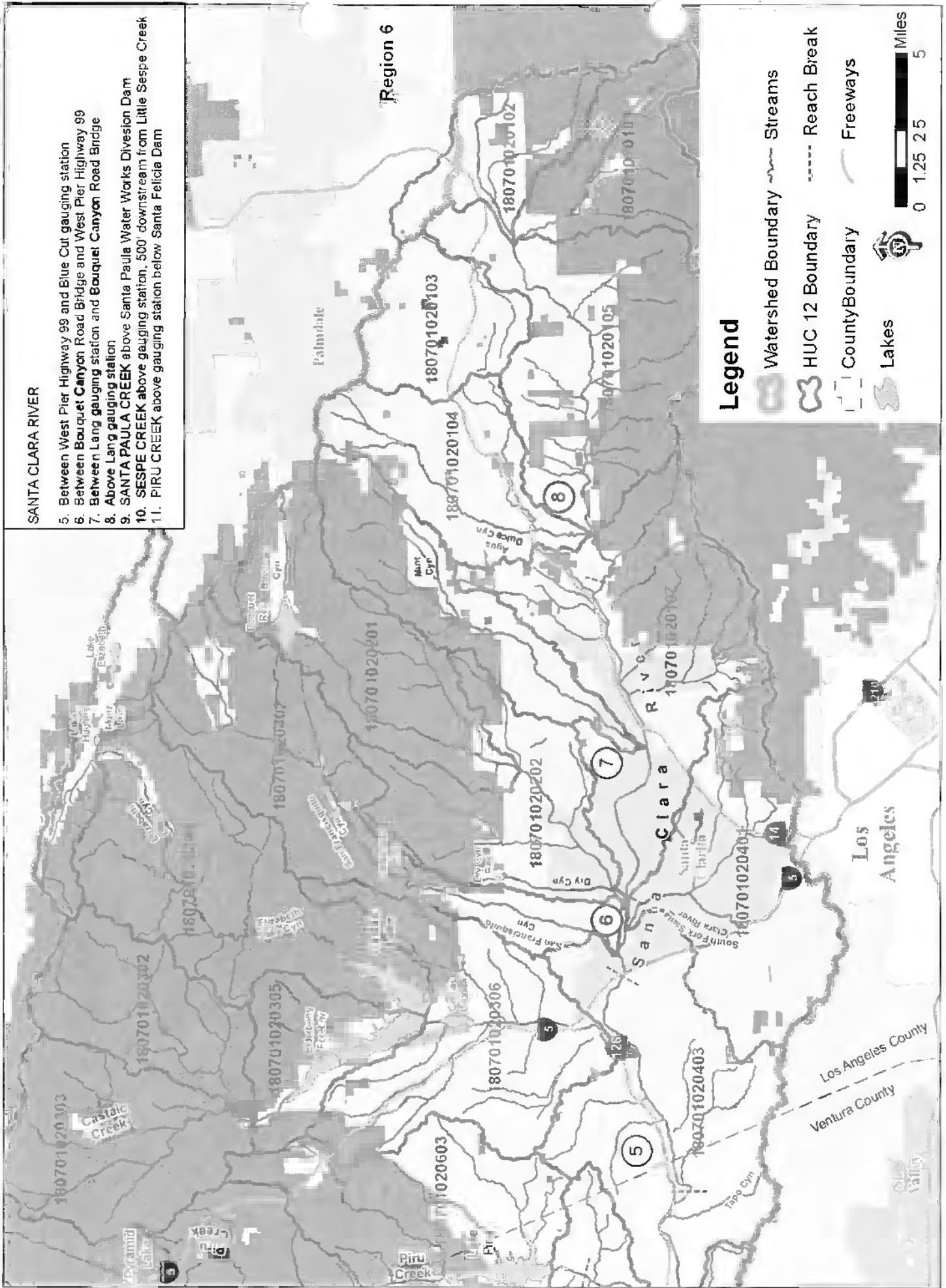


Figure B-1: Upper Santa Clara River Watershed Management Area Hydrologic Units.





