



CITY OF BRADBURY

Incorporated July 26, 1957

February 14, 2013

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Re: "Comment Letter – (1) Santa Monica Bay Beaches; (2) Marina del Rey Harbor Mothers' Beach and Back Basins; (3) Los Angeles Harbor, Inner Cabrillo Beach, and Main Ship Channel; (4) Ballona Creek, Ballona Estuary, and Sepulveda Channel; (5) Malibu Creek and Lagoon; and to amend Chapter 3 to modify the Implementation Provisions for Water Contact Recreation Bacteria Objectives."

Dear Ms. Townsend:

The City of Bradbury ("City") would like to comment on the recent proposed amendments to the Los Angeles Basin Plan revising coastal bacteria TMDLs. The City has two concerns regarding the amendment. First, each of these TMDLs improperly requires compliance with waste load allocations in the receiving water for MS4 permittees. Second, each also requires compliance with ambient standards. For the reasons set forth below, both of these requirements should be revised.

1. Compliance with WLAs in Receiving Waters

Federal stormwater regulations and a recent United States Supreme Court ("Supreme Court") decision (LACFCD v. NRDC), assert that compliance with water quality standards (including TMDLs) for MS4 permittees is to be determined by measuring outfall *discharges* -- not in a receiving water.

The permit requires all **effluent** and **ambient** monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.

However, "effluent monitoring," according to Clean Water Act §502 (33 USCA §1362), is defined as outfall monitoring:

*The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from **point sources** into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*

The Supreme Court, in LACFCD v. NRDC, affirmed a lower court ruling establishing that the point of compliance for MS4 permits is in outfall discharges. This effectively invalidated NRDC's claim that LACFCD had violated the 2001 Los Angeles MS4 permit because of numerous water quality exceedances that were detected in several receiving waters during wet and dry weather through in-stream measurements.

2. Compliance with Ambient Water Quality Standards

The subject bacteria TMDLs, along with others adopted by the Los Angeles Regional Board and approved by the State Board, require ambient monitoring in the receiving water. The issue here is that the term "ambient" is misused to mean wet weather monitoring as well as dry weather monitoring. MS4 permits require attainment of ambient water quality standards. In fact, all water quality standards are ambient standards.

The USEPA defines effluent as outfall discharges. Ambient monitoring is defined by USEPA to mean the:

Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.
<http://water.epa.gov/scitech/datait/tools/warsss/glossary.cfm>

It is clear that ambient monitoring does not include measurements in the receiving water during a storm event. Outfall monitoring measures discharges against a fixed ambient standard that has been established to protect beneficial uses. It serves no purpose to compare outfall discharges against a non-ambient standard (viz., during a storm event) or base compliance on measurements taken in-stream during a storm event.

3. Recommendations

The City of Bradbury recommends that all references to receiving water monitoring for MS4 compliance, or any other purpose be deleted, and that a definition of ambient water quality monitoring consistent with USEPA's definition be adopted. We further recommend issuance of a clarification to the effect that attainment of water quality standards is determined by measuring outfall discharges against fixed ambient standards – hopefully developed by the State's surface water ambient monitoring program.

Thank you for presenting these comments to the Board.

Sincerely,

/s/

Michelle Keith
City Manager
City of Bradbury

CC: Cary Reisman, City Attorney