

1 ALESHIRE & WYNDER, LLP
FRED GALANTE, Bar No. 178421
2 DAVID D. BOYER, Bar No. 144697
18881 Von Karman Ave., Suite 1700
3 Irvine, CA 92612
Telephone: (949) 223-1170
4 Facsimile: (949) 223-1180

5 Attorneys for Petitioner
City of Irwindale
6
7

8 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
9

10
11 In the Matter of the Petition of)
12 CITY OF IRWINDALE FOR REVIEW OF)
ACTION BY THE CALIFORNIA REGIONAL)
13 WATER QUALITY CONTROL BOARD, LOS)
ANGELES REGION IN ADOPTING ORDER)
14 NO. R4-2012-0175, NPDES PERMIT NO.)
CAS004001, WASTE DISCHARGE)
15 REQUIREMENTS FOR MUNICIPAL)
SEPARATE STORM SEWER SYSTEM (MS4))
16 DISCHARGES WITHIN THE COASTAL)
WATERSHEDS OF LOS ANGELES COUNTY,)
17 EXCEPT THOSE DISCHARGES)
ORIGINATING FROM THE CITY OF LONG)
18 BEACH MS4.)

) **PETITION FOR REVIEW;**
) **PETITIONER'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF PETITION FOR REVIEW**
) **OF THE CALIFORNIA REGIONAL**
) **WATER QUALITY CONTROL BOARD,**
) **LOS ANGELES REGION'S ADOPTION**
) **OF ORDER NO. R4-2012-0175,**
) **REISSUING NPDES PERMIT NO.**
) **CAS004001**

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

19
20
21
22
23
24
25
26
27
28

1 This Petition for Review is submitted on behalf of the City of Irwindale ("City" or
2 "Petitioner"), a municipal corporation located in the County of Los Angeles, pursuant to California
3 Water Code Section 13320 and California Code of Regulations ("CCR") title 23, section 2050, for
4 review of Order No. R4-2012-0175, NPDES Permit No., CAS004001, Waste Discharge
5 Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal
6 Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long
7 Beach MS4, which was adopted by the California Regional Water Quality Control Board,
8 Los Angeles Region, ("Order") on November 8, 2012.

9 **I. NAME, ADDRESS AND TELEPHONE NUMBERS OF PETITIONER**

10 1. Kwok Tam
11 City Engineer
12 Public Works Department
13 5050 North Irwindale Avenue
14 Irwindale, CA 91706
15 Phone: (626) 430-2212
16 Fax: (626) 430-2295
17 Email: ktam@ci.irwindale.ca.us

18 All materials in connection with this Petition for Review should also be provided to the
19 City's counsel as follows:

20 Fred Galante, City Attorney
21 David Boyer, Special Counsel
22 ALESHIRE & WYNDER, LLP
23 18881 Von Karman Ave., Suite 1700
24 Irvine, CA 92612
25 Telephone: (949) 223-1170
26 Facsimile: (949) 223-1180
27 Email: fgalante@awattorneys.com
28 dboyer@awattorneys.com

29 **II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH REVIEW IS**
30 **SOUGHT**

31 Petitioner seeks review of the Order by the State Water Resources Control Board ("State
32 Board") for the purpose of overturning the Order and remanding it to the Regional Board for
33 correction. A copy of the Order is attached herewith as **Exhibit "A."**

1 Petitioner reserves the right to file supplemental points and authorities in support of its
2 Petition for Review once the full administrative record becomes available. The Petitioner also
3 reserves the right to submit additional arguments and evidence responsive to the Regional Board's
4 or other interested parties' responses to the Petition for Review, filed in accordance with Title 23
5 CCR section 2050.5.

6 **III. DATE OF REGIONAL BOARD'S ACTION**

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

8 **IV. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION WAS**
9 **INAPPROPRIATE OR IMPROPER**

- 10 1. It failed to comply with the California Administrative Procedures Act (APA) when
11 it issued a revised tentative Order that included substantial changes unrelated to the
12 original text of the initial tentative Order.
- 13 2. It failed to comply with Federal regulations by: (i) not conducting a reasonable
14 potential analysis (RPA) when establishing numeric water quality based effluent
15 limitations (WQBEL) for total maximum daily load (TMDL) waste load allocations
16 (WLAs); (ii) requiring compliance with non-ambient "wet" and "dry" TMDL WLAs
17 in the receiving water based on in-stream monitoring; (iii) not providing a
18 discussion in the factual findings or evidence in the administrative record supporting
19 the use of numeric WQBELs, which require absolute compliance with TMDL
20 WLAs (determined by monitoring at the outfall), and failing to considering other
21 types of Federally acceptable WQBELs including BMP-WQBELs and surrogate
22 parameter numeric WQBELs; and (iv) requiring extra-MS4 monitoring and other
23 actions including but not limited to special studies, sediment quality testing, and fish
24 tissue monitoring.
- 25 3. It failed to comply with precedential State Board WQOs including: (i) several
26 WQOs that have established the infeasibility of using numeric effluent limitations in
27 MS4 permits; (ii) compelling compliance with extraneous and overbroad

28

1 requirements contrary to WQO 99-05; (iii) eliminating the iterative process contrary
2 to WQO 2001-15; and (iv) allowing watershed management programs (WMPs) and
3 enhanced watershed management programs (EWMPs) as a means of complying
4 with water quality standards (including TMDLs) contrary to WQO 2001-15.

5 4. It failed to comply with Water Code section 13241 notwithstanding that several of
6 the Order's requirements exceed of Federal regulations.

7 5. It failed to comply with Article XIII B of the California Constitution on unfunded
8 mandates because the Order requires compliance with requirements that exceed
9 Federal law.

10 **V. HOW THE PETITIONER IS AGGRIEVED**

11 Petitioner is a Permittee under the Order, and is responsible, along with the other Permittees
12 under the Order, for complying with all terms and conditions of the Order applicable to its
13 jurisdiction. Many of the terms and conditions under this Order exceed Federal and State law and
14 are lacking in clarity and are confusing. Failure to correctly comply with the Order exposes
15 Petitioner to liability under the Clean Water Act ("CWA") and the California Water Code
16 ("CWC"). The Order also requires compliance with requirements that are administratively and
17 extraordinarily costly because the Order incorporates several total maximum daily loads
18 ("TMDLs").

19 **VI. ACTION PETITIONER REQUESTS THE STATE WATER BOARD TAKE**

20 1. Invalidate the Order on the grounds that: (i) the Regional Board failed to comply
21 with California Administrative Procedure Act requirements when it issued a revised
22 tentative Order on October 18, 2012; and (ii) it failed to comply with Federal and
23 State law and precedential State Board water quality orders (WQOs).

24 2. Remand the Order to the Regional Board for correction.

25 **VII. STATEMENT OF POINTS AND AUTHORITIES**

26

27

28

1 The following is a discussion of the issues the Petitioner raises in this Petition. Additional
2 issues were raised by the Petitioner in written comments it submitted prior to the adoption of the
3 Order, copies of which are attached as **Exhibit “B.”**

4
5 **1. Regional Board Failed to Establish the Need for a Water Quality Based**
6 **Effluent Limitation**

7 The Regional Board failed to provide adequate justification for incorporating water quality
8 based effluent limitations (WQBELs) in the adopted Order for each of the TMDLs.¹ A WQBEL is
9 an enforceable translation in an MS4 permit for attaining compliance with a total maximum daily
10 load (TMDL) waste load allocation, which serves to protect a beneficial use of a receiving water.
11 Specifically, the Regional Board failed to establish first if discharges from each municipal MS4
12 have the *reasonable potential to cause, or contribute* to an excursion above any state water quality
13 standard including state narrative criteria for water quality.”² According to USEPA guidance:

14 A permit writer can conduct a reasonable potential analysis using
15 effluent and receiving water data and modeling techniques, as
described above, or using a non-quantitative approach.³

16 Federal regulations require performance of a reasonable potential analysis (RPA)⁴ to
17 determine if an excursion above a water quality standard has occurred, and further require the
18 measurement of stormwater discharge against an “allowable” ambient concentration.⁵

19 Neither the administrative record nor the Order’s findings indicate that the Regional Board
20 performed an RPA in accordance with the two foregoing approaches. The first approach would not
21 have been possible to perform, as no outfall (“effluent”) monitoring has been required for any Los

22 ¹ A TMDL is a type of water quality standard.

23 ² NPDES Permit Writers’ Manual, September 2010, page 6-23.

24 ³ *Ibid.*

25 ⁴ 40 CFR §122.44(d)

26 ⁵ *Ibid.*

1 Angeles County MS4 permit since the MS4 program began in 1990. No intra-MS4 modeling has
2 been conducted either by the Regional Board or by this permittee. Further, while wet and dry
3 weather monitoring data have been generated relative to some TMDLs, such data cannot singularly
4 serve to determine an excursion above a TMDL. Outfall monitoring data also needs to be
5 evaluated against in-stream generated ambient (dry weather) data to make such a determination.
6 As for the second, non-quantitative approach, the Regional Board also failed to provide
7 information in the administrative record indicating that it had performed a non-quantitative analysis
8 based on recommended criteria described in USEPA guidance.

9 In lieu of conducting either a quantitative or non-quantitative RPA, the Regional Board
10 added a third method of its own invention. In its fact sheet, the Regional Board concluded, based
11 on its reading of the "NPDES Permit Writers" Manual, that: "*Reasonable potential can be*
12 *demonstrated in several ways, one of which is through the TMDL development process."⁶ In
13 essence, the Regional Board is claiming that the same analysis used to establish a TMDL also
14 serves as a type of RPA. The logic it used to arrive at this conclusion is faulty. A WQBEL is a
15 means of attaining a TMDL WLA, which is typically expressed as a best management practice
16 (BMP). Before a WQBEL can be developed, however, a need for it must be established. As the
17 Writers' Manual points-out:*

18 *The permit writer should always provide justification for the*
19 *decision to require WQBELs in the permit fact sheet or statement*
20 *of basis and must do so where required by Federal and state*
21 *regulations. A thorough rationale is particularly important when*
the decision to include WQBELs is not based on an analysis of
*effluent data for the pollutant of concern.*⁷

22 It is clear that no such rationale is provided in the Regional Board's fact sheet which, in the
23 absence of effluent data derived from outfall monitoring, would have been absolutely necessary to
24 justify the need for a WQBEL. It is possible that outfall monitoring could demonstrate that

25 ⁶ Fact Sheet, Attachment "F" Order No. R4-2012-0175, MS4 Permit No. CAS004001, page F-33.

26 ⁷ *Ibid.*

1 existing BMPs implemented through a MS4 permittee's stormwater management plan is already
2 meeting a TMDL WLA, thereby obviating the need for any WQBEL.

3 The absence of any reference to WQBELs in any of the Regional Board's TMDLs further
4 counters its assertion that the TMDL development process satisfies the RPA requirement for
5 establishing a WQBEL.

6 **2. Numeric Water Quality Based Effluent Limitation Compliance with TMDL**
7 **Waste Load Allocations is Improper and Arbitrary**

8 Assuming that the Regional Board determined the need for WQBELs based on TMDL
9 WLA exceedances detected at the outfall, its definition of a WQBEL is inconsistent with Federal
10 law. It has defined a WQBEL to be the same as a TMDL WLA as the following indicates:

11 *This Order establishes WQBELs consistent with the assumptions*
12 *and requirements of all available TMDL waste load allocations*
assigned to discharges from the Permittees' MS4s.⁸

13 The Order continues:

14 *For purposes of compliance determination, each Permittee is*
15 *responsible for demonstrating that its discharge did not cause or*
16 *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.⁹

17 The Regional Board's definition of a WQBEL is incorrect. A WQBEL is not a compliance
18 standard in and of itself. Rather, it is a means of achieving a TMDL WLA or other water quality
19 standard; it cannot be used to determine an exceedance of a TMDL or any other water quality
20 standard.

21 Further, the WQBEL type that the Regional Board has chosen is a numeric WQBEL, which
22 is inappropriate. As mentioned in several USEPA guidance documents, a WQBEL is a BMP or
23 other action(s) deemed appropriate to attain a TMDL or other water quality standard. The Regional
24 Board's use of numeric WQBELs in meeting TMDL WLAs is arbitrary. While it may be possible

25 ⁸ Order, page 38.

26 ⁹ Order, page 144.

1 to establish a numeric WQBEL that is the same as a TMDL WLA, there must be a justification for
2 it because, as USEPA has noted, the need for one would only rarely arise. The administrative
3 record, however, is omits any explanation of the reason a numeric WQBEL is required over a BMP
4 WQBEL – especially given that no excursions above any water quality standard has been detected
5 through effluent/outfall monitoring. USEPA’s 2010 memorandum on TMDL compliance provides
6 clear guidance on this matter:

7 *The permitting authority’s decision as to how to express the*
8 *WQBEL(s), either as numeric effluent limitations or BMPs,*
9 *including BMPs accompanied by numeric benchmarks, should be*
10 *based on an analysis of the specific facts and circumstances*
surrounding the permit, and/or the underlying WLA, including the
nature of the stormwater discharge, available data, modeling
*results or other relevant information.*¹⁰

11 Nothing in the Regional Board’s administrative record contains a rationale justifying numeric
12 effluent limitations based on the above criteria.

13 The Regional Board also neglected to discuss other types of numeric WQBELs that are
14 referenced in USEPA’s November 2010 memorandum. A follow-up memorandum issued by
15 USEPA in March 2011 clarified that the 2010 memorandum should not be interpreted to mean that
16 only end-of-pipe numeric WQBELs applied to an MS4’s outfall must be used. The clarification
17 memorandum explained that the 2010 memorandum “*expressly describes “numeric” limitations in*
18 *broad terms, including “numeric parameters acting as surrogates for pollutants such as*
19 *stormwater flow volume or percentage or amount of impervious cover.”*¹¹ The administrative
20 record and the Order’s fact sheet mention nothing about these and other numeric WQBELs.

21 There is also the issue of “feasibility” as it relates to numeric WQBELs. USEPA’s 2010
22 memorandum recommends *where feasible, the NPDES permitting authority exercise its discretion*

23
24
25 ¹⁰ Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Waste
26 Load Allocations (WLAs) for Storm Water Sources and NPDES Permits Based on Those WLAs,” November 2010,
27 page 2.

28 ¹¹ Memorandum from Kevin Weiss, Water Permits Division, USEPA, Washington D.C., March 17, 2011, page 2.

1 to include numeric effluent limitations as necessary to meet water quality standards.¹² This view is
2 based on 40 CFR §122.44(k), which authorizes the use of BMPs “when numeric limitations are
3 infeasible.” The issue of whether numeric effluent limitations must be included in MS4 permits
4 has been settled by the State Water Resources Control Board (State Board). Starting with Water
5 Quality Order 91-03, the State Board held:

6 ... we conclude that numeric effluent limitations are infeasible as a
7 means of reducing pollutants in municipal storm water discharges,
8 at least at this time.¹³

9 Although this determination was made over twenty years ago, the State Board’s position on
10 this issue has not changed since then, as evidenced by its adoption of the Caltrans MS4 permit in
11 September of 2012. Citing the fact sheet for that permit, the State Board affirmed that:

12 It is not feasible at this time to set enforceable numeric effluent
13 criteria for municipal BMPs and in particular urban discharges.¹⁴

14 The Caltrans MS4 permit fact sheet also supports the use of BMP WQBELs as a means of
15 meeting TMDLs and other quality standards. The Caltrans MS4 permit is also subject to TMDLs
16 adopted by the Regional Board and USEPA. If the Order is not overturned, Los Angeles County
17 MS4 permittees will be compelled to strictly comply with numeric WQBELs and RLWs, while
18 Caltrans need only implement WQBEL BMPs to achieve compliance with the same TMDLs.

19 Moreover, the Order allows the use of BMPs to meet Federal TMDLs, presumably until and
20 if the Regional Board and State Board adopt them at a later date as basin plan amendments.
21 Having two compliance standards, one for State adopted TMDLs that require meeting numeric
22 WQBELs and one for USEPA adopted TMDLs that require BMP-WQBELs makes no sense and is
23 unfair – given that all of the TMDLs, when implemented through the Order must follow the same

24 ¹² Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Waste
25 Load Allocations (WLA) for Storm Water Sources and NPDES Permits Based on Those WLAs,” November 2010,
26 page 2.

27 ¹³ State Water Resources Control Board Water Quality Order 91-03, page 49.

28 ¹⁴ Fact Sheet for NPDES Permit and Waste Discharges Requirements for State of California Department of
Transportation, NPDES Permit No. CAS000003, Order No. 2012-XX-DWG, September 7, 2012, page 9.

1 statutory rules and guidance. While the State may impose requirements more stringent than
2 Federal regulations it must provide a justification. *Inter alia*, it must comply with §13241 of the
3 California Water Code (CWC), which calls for consideration of factors such as economics and
4 housing. There is nothing in the record that evidences the performance of such an analysis. The
5 Regional Board has taken the position that none of the requirements it proposes exceeds Federal
6 requirements.

7 Since the Regional Board failed to establish the need for a WQBEL, incorrectly defined a
8 WQBEL as a compliance standard (as opposed to as means of achieving compliance with a TMDL
9 WLA) and provided no justification for requiring a numeric WQBEL, any requirement of the Order
10 that is dependent on compliance or associated with a WQBEL is invalid.

11 **3. Previously Adopted TMDLs Establish Compliance with Waste Load**
12 **Allocations in the Receiving Water which Exceeds Federal Stormwater**
13 **Regulations and State Law as they Relate to MS4 Permits**

14 In addition to complying with TMDL WLAs at the outfall, the Order also requires
15 compliance with TMDL WLAs (dry and wet weather) in the receiving water as a “limitation.”
16 Examples include, but are not limited to, the metals TMDLs for the Los Angeles River adopted by
17 the State, the metals TMDL for the San Gabriel River adopted by USEPA, the Los Angeles River
18 Bacteria TMDL and the Dominguez Channel and Greater Los Angeles and Long Beach Harbor
19 Waters Toxic Pollutants TMDL. The affected TMDLs all require in-stream monitoring to
20 determine compliance with waste load allocations.

21 Federal regulations only require two types of monitoring: effluent and ambient:

22 The permit requires all effluent and ambient monitoring necessary
23 to show that during the term of the permit the limit on the indicator
24 parameter continues to attain and maintain applicable water quality
standards.¹⁵

25
26
27 ¹⁵ CFR 40 §122.44(d)(viii)(B).

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

3 Natural concentration of water quality constituents prior to mixing
4 of either point or nonpoint source load of contaminants. Reference
5 ambient concentration is used to indicate the concentration of a
6 chemical that will not cause adverse impact to human health.¹⁶

7 All TMDLs and other water quality standards are ambient standards as noted in a USEPA
8 commissioned report:

9 ... EPA is obligated to implement the Total Maximum Daily Load
10 (TMDL) program, the objective of which is attainment of ambient
11 water quality standards through the control of both point and
12 nonpoint sources of pollution.¹⁷

13 Although some of the TMDLs specify ambient monitoring such as the Los Angeles River
14 Metals and Bacteria TMDLs, the Regional Board has misunderstood ambient monitoring to be a
15 form of in-stream compliance monitoring, along with TMDL effectiveness monitoring. For
16 example, the Los Angeles River Metals TMDL requires Los Angeles County MS4 permittees and
17 Caltrans to submit a coordinated monitoring plan (CMP), which includes both "TMDL
18 effectiveness monitoring and ambient monitoring."¹⁸

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

23 ¹⁶ See USEPA Glossary of Terms.

24 ¹⁷ Assessing the TMDL Approach to Water Quality Management Committee to Assess the Scientific Basis of the
25 Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science and Technology Board, National
26 Research Council, page 12.

27 ¹⁸ Total Maximum Daily Loads for Metals and Los Angeles River and Tributaries, U.S. Environmental Protection
28 Agency, Region 9, California Regional Water Quality Control Board, Los Angeles Region, May 27, 2005, p. 79.

1 It is unclear why the Regional Board established two compliance standards, one of which
2 (viz., wet weather WLAs) is clearly not authorized under Federal law. One explanation is that it
3 did so because previously adopted TMDLs, some of which date back a few years, assumed that
4 compliance with them would be determined by in-stream monitoring. The Regional Board appears
5 not to have been aware at the time of the TMDLs adoption that attainment of waste load allocations
6 is determined by outfall monitoring. More recently adopted TMDLs, however, such as the
7 Machado Lake Nutrients TMDL, do not require compliance in the receiving water (the lake in this
8 case) but instead compliance at the outfall. The Regional Board has not explained why certain
9 TMDLs are required to be complied with at the outfall while others are required to be complied
10 with in the receiving water.

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

18 MS4 permits are only required to conduct outfall monitoring for stormwater discharges
19 from the MS4. Dry or non-stormwater discharge monitoring is limited to within the MS4 and for
20 the exclusive purpose of detecting illicit discharges and connections upstream of an outfall at field
21 screening points. Therefore, monitoring or any requirement that lies outside of the outfall is not
22 authorized by Federal law.

23 **4. Order Requirements Based on Compliance with In-stream TMDL WLAs Must**
24 **be Voided**

25 Several TMDLs include requirements to submit implementation plans, monitoring plans,
26 and special studies that are based on compliance with TMDL WLAs determined by in-stream
27

1 monitoring. These TMDL-related requirements must be overturned and re-opened to remove the
2 extra-legal requirements.

3 **5. Time Schedule Orders Are Inappropriate**

4 Because the Order incorporates TMDLs with compliance deadlines to meet WLAs based on
5 in-stream monitoring, several permittees will be in an instant state of non-compliance as soon as
6 the Order takes effect. Monitoring results for the Los Angeles River Metals TMDL reveal that no
7 permittee is in compliance with any of the wet weather WLAs for metals. The Order specifies that:

8 Permittees shall comply immediately with water quality-based
9 effluent limitations and/or receiving water limitations to implement
10 WLAs in state-adopted TMDLs for which final compliance
11 deadlines have passed pursuant to the TMDL implementation
12 schedule.¹⁹

11 If a permittee cannot comply with TMDL WLAs either at the outfall or in the receiving
12 water, it has the option of asking the Regional Board for additional time to comply through a Time
13 Schedule Order (TSO), an Administrative Enforcement Action and Remedy under CWC §13300.
14 A permittee can be excused of a violation and enforcement action by, among other things,
15 providing the Regional Board with a *Justification of the need for additional time to achieve the*
16 *water quality-based effluent limitations and/or receiving water limitations.*²⁰

17 The TSO option is not applicable or appropriate because a violation cannot arise if
18 monitoring detects a WLA exceedance either at the outfall or in the receiving water. A WQBEL,
19 as mentioned, is a means of achieving compliance with a WLA, typically through the
20 implementation of BMPs and other actions. A violation also cannot result if an exceedance is
21 detected in a receiving water because compliance is determined at the outfall. Furthermore, if a
22 permittee is implementing its stormwater quality management plan, in accordance with the Order's
23 RWL provisions, an exceedance cannot result and a violation cannot arise.

24
25 _____
26 ¹⁹ Order, page 149.

27 ²⁰ *Ibid.*

1 **6. Receiving Water Limitations Are Confusing, Unclear, Overbroad and Exceed**
2 **State Water Quality Order 99-05**

3 RWL language is required in all California MS4 permits. The Regional Board contends
4 that the RWL contained in the adopted Order is no different from the previous MS4 permit that was
5 adopted in 2001. However, a comparison of the 2001 Order and the adopted Order reveals that
6 they are significantly dissimilar. The 2001 Order and its amendments require compliance with
7 water quality standards and water quality objectives:

8 Discharges from the MS4 that cause or contribute to the violation
9 of Water Quality Standards or water quality objectives are
 prohibited.²¹

10 The adopted Order, on the other hand, requires compliance with RWLs, which it defines as:

11 Any applicable limitation to the applicable water quality objective
12 or criterion for the receiving water as contained in Chapter 3 or 7
13 of the Water Quality Control Plan for the Los Angeles Region
 (Basin Plan), water quality control plans or policies adopted by the
14 State Water Board, or Federal regulations, including but not
 limited to 40 CFR §131.38.²²

15 This RWL definition is not contained in the previous Order and is defective for the
16 following reasons:

- 17 i. It requires compliance only with water quality objectives, which pertain to
18 waters of the State. Water quality standards, which is a Federal term applied
19 to the waters of the United States, is absent. Furthermore, the term
20 “criterion” is not defined, making compliance with it impossible.
- 21 ii. It is overbroad in that it includes compliance with the entire Basin Plan;²³ all
22 water quality controls plans or policies adopted by the State Water Board –

23 _____
24 ²¹ NPDES CAS004001, Order No. 01-18, page 23.

25 ²² Order, Attachment A, Definitions, page A-17.

26 ²³ All water quality control plans adopted by the State could also include basin plans adopted by all Regional Water
27 boards since the State Board must also approve all basins plans.

1 including those adopted by other Regional Boards; 40 CFR §131.38
2 (*Establishment of numeric criteria for priority toxic pollutants for the State*
3 *of California*) and all other Federal regulations.

4 iii. It is vague because it requires compliance with Chapter 3 or 7 of the Basin
5 Plan.

6 The RWL language in the Order is also inconsistent with precedential State Board Water
7 Quality Order 99-05, which unequivocally requires compliance with storm water management
8 plans as a means of complying with RWLs and, therewith, water quality standards. WQ 99-05
9 mentions nothing about the need to comply with the other aforementioned provisions.

10 Further adding to the confusion is the Order's revised fact sheet which states that RWLs
11 *prohibits discharges from the MS4 that cause or contribute to the violation of water quality*
12 *standards.*²⁴ The Order, on the other hand, says the following: *Discharges from the MS4 that cause*
13 *or contribute to the violation of receiving water limitations are prohibited.*²⁵ This begs the
14 question, are permittees required to prohibit discharges that cause or contribute to water quality
15 standards or to receiving waters?

16 7. **Iterative Process Is Not Per Se Included in the Order**

17 The iterative process is a standard MS4 feature in State-issued MS4 permits, which is not
18 specifically referred to as an "iterative process" but instead is described in operational terms under
19 the Order's RWL section. Nevertheless, State Water Board Orders have affirmed that the iterative
20 process is a resident MS4 permit feature. Through WQO 2001-15, the State Board explained:

21 ... Our language requires that storm water management plans be
22 designed to achieve compliance with water quality standards.
23 Compliance is to be achieved over time, through an iterative
approach requiring improved BMPs.²⁶

24 ²⁴ Fact Sheet, Attachment "F" Order No. R4-2012-0175, MS4 Permit No. CAS004001, page F-35.

25 ²⁵ Order, page 38.

26 ²⁶ State Water Board Order WQ 2001-15, page 5.

1 Eight years later, the State Board re-affirmed that position in WQO 2009-0008:

2 ... we will generally not require 'strict compliance' with water
3 quality standards through numeric effluent limitations," and
4 instead "we will continue to follow an iterative approach, which
5 seeks compliance over time" with water quality standards.²⁷

6 Although the Order's revised fact sheet refers to an iterative process described in the RWL
7 section, the Order does not specifically identify the process as an iterative one. This poses a
8 serious problem. On the one hand, the State Board has determined that an iterative process must be
9 included in MS4 permits, but on the other the 9th Circuit Court in *NRDC v. Los Angeles County*
10 *Flood Control District* held there is no "textual support" for the iterative process in the 2001 Order.
11 This ruling, in effect, invalidates an iterative process in any Order if it is not referenced as an
12 iterative process per se. In other words, it is not enough for a "process" to be described; it must
13 also be called-out as an iterative process. To comply with the State Board orders without running
14 afoul of the 9th Circuit's ruling, the Regional Board must include the term "iterative process" in the
15 Order. It is expected that this and other RWL issues will be resolved once the State Board
16 develops model RWL language.

16 **8. Adaptive Management Process Does Not Comply with the Iterative Process**
17 **Required of State Board Orders**

18 The Order makes available an adaptive management process (AMP) to permittees that
19 choose to participate in a WMP. The AMP appears to be the iterative process but modified by the
20 Regional Board for use by those permittees that participate in a WMP. However, the AMP does
21 not afford the same protections as the iterative process. Most conspicuous, the AMP does not place
22 a permittee into compliance with RWLs or water quality standards by implementing a stormwater
23 management plan in a timely manner.

24 The AMP should be struck from the Order because it does not comply with the iterative
25 process requirements referenced in the aforementioned State Board WQOs.

26 _____
27 ²⁷ State Water Board Order WQ 2009-0008, page 8.

1 **9. Watershed and Enhanced Watershed Management Programs Are Premature**
2 **and Cannot Provide an Alternative Compliance Approach**

3 The watershed management program (WMP) and enhanced watershed management
4 program proffered by the Los Angeles County Flood Control District) are compliance options
5 available to permittees. According to the Regional Board they are intended to “incentivize”
6 permittees to participate in a collective permittee program instead of an individual program, which
7 is based solely on the implementation of stormwater quality management plans that include BMPs
8 and other requirements that target TMDL WLAs. The WMP and EWMP on the other hand, take a
9 collective approach to addressing TMDLs through uniform programs, BMPs, and other
10 requirements implemented at a watershed level. The WMP and EWMP enable compliance with
11 WQBELs and RWLs – albeit both requirements are unauthorized under Federal stormwater
12 regulations and are contrary to precedential State Board WQOs – unless however they can be
13 regarded as stormwater management plan sub-sets.

14 The WMP approach, in any case, is unwarranted at this time because none of the MS4s has
15 been characterized – a requirement specified in CFR 40, §122.26. As mentioned, this is because
16 previous Los Angeles County Orders did not require outfall monitoring. Without outfall data, it is
17 impossible to know if an MS4 is causing or contributing to a TMDL WLA exceedance. Without
18 such data, it is also impossible to know if MS4s have pollution contribution issues in common
19 sufficient to warrant a watershed approach to pollution management.

20 Further, the WMP and EWMP approaches are based on the faulty premise that compliance
21 with TMDL WLAs is determined: (1) in the receiving water through in-stream, non-ambient
22 monitoring; and (2) by strict compliance with WLAs, expressed as numeric WQBELs, based on
23 outfall monitoring. Therefore, the Order should be revised to treat the WMP and EWMP as
24 stormwater management program options.

25 **10. Non-stormwater Discharge Prohibitions Exceed Federal Regulations and Are**
26 **Inconsistent with State Board Water Quality Orders, Confusing, and in**
27 **Conflict**

1 The adopted Order contains a significant revision to non-stormwater discharge prohibitions.

2 It reads:

3 Each Permittee shall, for the portion of the MS4 for which it is an
4 owner or operator, prohibit non-storm water discharges through the
MS4 to receiving waters ...²⁸

5 The previous (2001) Order, in sharp contrast, required MS4 permittees to “*effectively*
6 *prohibit non-storm water discharges into the MS4.*”²⁹ The previous Order also provided for
7 several exceptions of non-stormwater discharges that could be legally discharged to the MS4.
8 Non-stormwater discharges that were not exempted were deemed illicit discharges. The adopted
9 Order, on the other hand, revises the non-stormwater discharge prohibition by replacing “to” the
10 MS4 with “through” the MS4 and in the case of TMDL discharges “from the MS4” to a receiving
11 water.

12 The adopted Order also, oddly, retains from the previous Order the requirement to continue
13 to establish legal authority to prohibit illicit discharges and connections to the MS4. The Regional
14 Board apparently retained this provision to enable permittees to enforce the illicit connection and
15 discharge detection and elimination (ICID-DE) program. So doing, however, creates a conflict
16 with the Order’s requirement to treat non-exempted, non-stormwater discharges from the MS4 also
17 as illicit discharges, not only to the MS4 but through and from it as well. This will give rise to
18 much confusion if the Order is not overturned and corrected.

19 The Regional Board’s revised non-stormwater provision is not authorized under Federal
20 stormwater regulations. Nevertheless, the Regional Board attempts to rely on 40 CFR
21 §122.26(a)(3)(iv) to assert that an MS4 permittee is only responsible for discharges of storm water
22 and non-storm water from the MS4. The Regional Board’s citation mentions nothing about
23 permittees being responsible for stormwater and non-storm from the MS4. Instead, it states that
24 *Co-permittees need only comply with permit conditions relating to discharges from the municipal*

25 _____
26 ²⁸ Order, page 27.

27 ²⁹ NPDES CAS004001, Order No. 01-182, December 13, 2001, page 16.

1 *separate storm sewer system*. But the term “discharges” here refers to stormwater discharges only.
2 Beyond this, 40 CFR §122.26 mentions nothing about prohibiting non-stormwater or illicit
3 discharges from or through the MS4.

4 Instead, Section 402, subdivision (p)(B)(ii) of the Clean Water Act, (33 U.S.C.
5 §402(p)(B)(ii)) clearly specifies that MS4 permits “*shall include a requirement to effectively*
6 *prohibit non-stormwater discharges into the storm sewers*. Nothing in this section or anywhere
7 else in the Clean Water Act authorizes a prohibition of non-stormwater discharges “through” or
8 “from” the MS4. In fact, the Regional Board cites no legal authority either in the Order or in the
9 most recent fact sheet to support changing the discharge prohibition from “to” or “into” the MS4 to
10 “through” or “from” the MS4.

11 It should also be noted that all MS4 permits in California adhere to Section 402, subdivision
12 (p)(b)(ii). This includes the State Board’s recently adopted Caltrans MS4 permit and its draft Phase
13 II MS4 permit, which is scheduled for adoption in January of next year.

14 Further, the Regional Board’s revision of the non-stormwater discharge prohibition is
15 totally inconsistent with USEPA’s guidance: *Illicit Discharge Detection and Elimination A*
16 *Guidance Manual for Program Development and Technical Assessments*. The manual is based on
17 Federal non-stormwater discharge prohibition into the MS4. It provides for specific actions, tasks,
18 and monitoring methodologies to enable MS4 permittees to comply with the illicit connection and
19 discharge detection and elimination program (ICID/DE), which is a Federal stormwater
20 requirement. Changing the non-stormwater discharge prohibition to regulate non-stormwater
21 discharges through and from the MS4 would render useless the ICID/DE manual and its purpose.

22 The Regional Board bases its radical revision of the non-stormwater discharge prohibition
23 on the need to prevent polluted dry weather discharges, including those subject to TMDL
24 regulation, from entering the MS4. When Congress adopted 402(p)(B), it was aware that non-
25 stormwater discharges could contribute to in-stream impairments of beneficial uses. However, the
26 means for achieving this objective is the ICID-DE program.

27
28

1 Prohibiting non-stormwater discharges to the MS4 effectively reduces and in some cases
2 eliminates illicit discharges to receiving waters by controlling the source of the discharges within
3 the limitations of its local authority. To that end, MS4 permittees are required to establish legal
4 authority to make an illicit discharge or connection a municipal violation, which if not halted,
5 would require the discharge to be permitted under an authority other than the municipality.³⁰ In
6 addition, the ICID-DE program requires monitoring to field screen for illicit connections and
7 dumping in accordance with procedures specified in 40 CFR §122.26(d)(1)(iv)(D). An effective
8 field screening program should significantly reduce non-stormwater discharges to the MS4 by
9 eliminating or permitting them at the source.

10 Requiring compliance instead with prohibiting non-stormwater discharges through and
11 from the MS4 would place the onus of treating all non-stormwater discharges – including those
12 over which a municipality has no control – exclusively on permittees.

13 Another compelling argument against requiring compliance with non-stormwater
14 discharges through and from the MS4 is that it would frustrate municipal code enforcement in
15 halting non-stormwater discharges through or from the MS4. Observing and detecting an
16 unauthorized non-stormwater discharge through or from the MS4 is far more difficult than
17 observing a non-stormwater discharge to the MS4. To ferret-out non-exempted stormwater
18 discharges once it is through an MS4 component such as an enclosed storm drain or in a catch
19 basin would require frequent monitoring not only at the outfall but upstream of it as well.

20 Then there is the issue of enforcement. If a non-stormwater discharge is detected through
21 monitoring from a manhole point it would be difficult if not impossible to determine legally who or
22 what caused the impermissible non-stormwater discharge. Detecting a non-stormwater discharge
23 to the MS4, prior to it entering a storm drain or catch basin (where the discharge cannot be readily
24 be seen), or being discharged from an outfall, is much easier. If a suspected or actual illicit
25 discharge is identified, a municipal permittee can quickly respond to it through a code enforcement

26 ³⁰ Federal Register Volume 55, No. 222, 47990.
27

1 citation and would not have to be concerned about evidence issues if the violation is challenged.
2 Further complicating matters is that there are dischargers that are covered under separate NPDES
3 permits that are allowed to discharge to the MS4. If an exceedance for a dry weather TMDL
4 discharge is detected by outfall monitoring covering a drainage area that includes NPDES
5 permitted discharges, how would anyone know who or what caused the exceedance? This creates a
6 very real evidentiary problem – not unlike the one the 9th Circuit Court dealt with in *NRDC v.*
7 *LACFCD* concerning both non-storm water and stormwater exceedances detected in receiving
8 waters.

9 **11. Monitoring Requirements Exceed Federal Requirements**

10 The Order’s monitoring requirements contained in Attachment E, Monitoring and
11 Reporting Program are excessive. They require outfall and receiving water monitoring to comply
12 with wet and dry weather TMDL WLAs. As mentioned earlier, such requirements are not
13 authorized under Federal regulations. Federal regulations only require outfall monitoring to
14 evaluate MS4 stormwater discharges against ambient standards in the receiving water to determine
15 exceedances.

16 Further, the “end of the regulatory line” for MS4 permits is stormwater discharges from the
17 outfall. Such stormwater discharges must be controlled to the maximum extent practicable (MEP).
18 As noted, non-stormwater discharges only require a prohibition to the MS4. Although
19 non-stormwater discharge monitoring is required under Federal regulations, it is limited to
20 intra-MS4 field screening for the purpose of identifying and detecting illicit discharges and
21 connections. Nothing in 40 CFR §122.26 requires the performance of tasks that lie outside of the
22 MS4. This includes, but is not limited to in-stream monitoring, fish tissue testing, special studies,
23 and sediment testing.

24 The Regional Board contends, however, that Federal regulations do in fact authorize it to
25 require extra-MS4 monitoring. It cites several Federal regulations to support this claim, which as
26 explained below, are not persuasive.

27
28

- 1 • Clean Water Act Section 308 (33 U.S. C. §308) is inapplicable because it pertains to
2 maintaining records, submitting reports, maintaining monitoring equipment, and
3 sampling effluents in accordance with such sampling methods. The use of the term
4 “effluents” can only apply to point source discharges, not in-stream. Since Federal
5 regulations only require outfall monitoring of stormwater discharges, effluent can
6 only mean stormwater discharges from the outfall. This supports the argument that
7 MS4 monitoring is restricted to stormwater discharges and non-stormwater
8 discharge monitoring is limited to intra-MS4 field screening for illicit discharges
9 and connections.
- 10 • 40 CFR §123.25 is irrelevant because it merely asserts that States may go beyond
11 Federal monitoring requirements. This is not disputed. Nevertheless, if the
12 Regional Board chooses to exceed Federal monitoring requirements it must comply
13 with 33 U.S. C. section 13241, which includes but is not limited to an analysis of
14 economic and housing impact considerations. That analysis has not been done by
15 the Regional Board.
- 16 • CFR 40 §122.41(h) does not apply because it refers to a permittee’s duty to provide
17 permit-related information to the “Director.” It cannot be used to justify requiring a
18 permittee to perform any monitoring requirement that the Director wishes.
- 19 • 40 CFR §122.41(j) is inapplicable because it deals with the permitting agency’s
20 right to inspection and entry to an NPDES permitted facility.
- 21 • 40 CFR §122.41(k) is inapplicable because it is exclusively concerned with
22 permittee signatory requirements relating to applications, reports, and other
23 information submitted to the permitting agency’s Director.
- 24 • 40 CFR §122.41(l), is inapplicable because it requires a permittee to notify the
25 permitting agency’s Director of any changes to a permitted facility.
- 26 • 40 CFR §122.44(i), which although pertains to monitoring requirements affecting
27 MS4 permittees, only specifies requirements relating to pollutant measurements and
28

1 the volume of effluent discharged from outfalls. It does not authorize a permitting
2 agency to require extra-MS4 monitoring. Further, its reference to taking
3 measurements in internal waste streams and pollutants in intake water relates to
4 “influent” discharges associated with sewage treatment and industrial facilities.

- 5 • 40 CFR §122.48 is inapplicable because it is exclusively concerned with recording
6 and reporting results.
- 7 • 40 CFR §122.26(d)(2)(i)(F) applies only to the permittee’s responsibility to:
8 *Carryout out all inspection, surveillance and monitoring procedures necessary to*
9 *determine compliance and non-compliance with permit conditions including the*
10 *prohibition on illicit discharges to the municipal separate storm sewer.* It confers
11 no authority upon the Regional Board to require permittees to perform extra-MS4
12 monitoring.
- 13 • 40 CFR §122.26(d)(2)(iii)(D) applies to the permittee’s responsibility to propose a
14 *monitoring program for representative data collection for the term of the permit that*
15 *describes the location of outfalls or field screening points to be sampled (or the*
16 *location of in-stream stations), why the location is representative, the frequency of*
17 *sampling, parameters to be sampled, and a description of sampling equipment.* This
18 provision does not give the Regional Board the authority to require extra-MS4
19 monitoring. It only allows a permittee to select outfalls or field screening points
20 (which are intra-MS4). Field screening refers to a specific procedure for selecting
21 outfalls and manhole points to be used to facilitate detection and elimination of
22 illicit discharges and connections. A permittee may propose in-stream stations as
23 alternatives to outfalls or field screening points (manholes upstream of an outfall) in
24 the absence of these facilities. This is because there are areas of the Country where
25 there are no outfalls or manhole points but instead only in-stream points from which
26 monitoring can be performed.

1 • 40 CFR §122.42(c) is irrelevant because it governs annual reporting and has nothing
2 to do with monitoring.

3 All requirements contained in the Order’s MRP that call for extra-MS4 permit monitoring should
4 be removed from the Order.

5 Finally, the Order fails to require illicit connection and discharge field screening which is a
6 mandatory requirement specified under Federal stormwater regulations.³¹ Field screening includes
7 a procedure for identifying field screening points (outfalls and manholes) and taking
8 non-stormwater discharge samples for analysis of prescribed constituents including pH, total
9 chlorine, total copper, total phenol, and detergents (surfactants).

10 The Order also requires monitoring for outfall municipal action levels (MALs). This
11 monitoring requirement is an addition to conducting outfall monitoring for TMDL compliance.
12 The Order states that the purpose of municipal action level (MAL) sampling is to *determine the*
13 *effectiveness of a Permittee’s storm water management program in reducing pollutant loads from a*
14 *particular drainage area and in order to assess compliance with the MEP standard.*³² The Order
15 fails to explain what criteria are to be used to determine compliance with MEP and how it relates to
16 compliance with water quality standards.

17 The Order’s fact sheet also bases the need for MAL monitoring on the need to evaluate *the*
18 *effectiveness of individual post-construction BMPs in reducing pollutant loads and assessing*
19 *compliance with the MEP standard.*³³ But the fact sheet does not explain how MAL monitoring
20 results, based on outfall sampling, can be helpful in this regard. Stormwater discharges contain
21 pollutants from a multiplicity of sources. Therefore, how can MAL sampling results be used to
22 determine if post-construction BMPs or any other BMPs such as street sweeping are effective?
23 Further, there is no explanation of what “effective” means here.

24 _____
25 ³¹ 40 CFR §122.26(d)(1)(iv)(D).

26 ³² Order, Attachment F, Fact Sheet, page F-31.

27 ³³ *Ibid.*

1 Beyond this, it is not clear why MAL monitoring at the outfall is required given that outfall
2 monitoring for TMDL compliance is also a requirement; and that many of the MAL constituents
3 overlap TMDL constituents, including metals (copper, zinc, lead, and selenium), toxics, and
4 bacteria. What is more, Federal stormwater regulations also require outfall monitoring for specific
5 constituents. MAL and TMDL monitoring requirements duplicate outfall monitoring requirements
6 called-out in 40 CFR § 122.26, which specifies:

7 For samples collected and described under paragraphs (d)(2)(iii)(A)(1) and
8 (A)(2) of this section, quantitative data shall be provided for: the organic
9 pollutants listed in Table II; the pollutants listed in Table III (toxic metals,
cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the
following pollutants:

10 Total suspended solids (TSS)

11 Total dissolved solids (TDS)

12 COD

13 BOD5

14 Oil and grease

15 Fecal coliform

16 Fecal streptococcus

17 pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus³⁴

18 This raises the following question: Why did the Regional Board fail to prescribe outfall monitoring
19 for Federally-prescribed constituents while requiring monitoring for MAL constituents, which is
20 not a specific Federal requirement?

21 Beyond this, the purpose of MALs, as referenced in a USEPA commission study is to
22 provide a sensible alternative to TMDL compliance – not to only evaluate the performance of a
23 specific BMP or to determine MEP for MEP sake. The report explains:

24 The action level would be set to define unacceptable levels of stormwater
25 quality (e.g., two standard deviations from the median statistic, for
simplicity). Municipalities would then routinely monitor runoff quality from

26 ³⁴ 40 CFR §122.26(d)(2)(A)(3).

1 major outfalls. Where an MS4 outfall to surface waters consistently exceeds
2 the action level, municipalities would need to demonstrate that they have
3 been implementing the stormwater program measures to reduce the
4 discharge of pollutants to the maximum extent practicable. The MS4
5 permittees can demonstrate the rigor of their efforts by documenting the
6 level of implementation through measures of program effectiveness, failure
7 of which will lead to an inference of noncompliance and potential
8 enforcement by the permitting authority.³⁵

9 The addition of MAL monitoring confuses compliance, is duplicative, and increases the cost of
10 monitoring unnecessarily.

11 The Order prescribes monitoring requirements for new developments without justification.
12 The Order requires New Development and Re-development BMP effectiveness tracking, the
13 objectives of which are to:

14 ... track whether the conditions in the building permit issued by the
15 Permittee are implemented to ensure the volume of storm water associated
16 with the design storm is retained on-site as required by Part VI.D.7.c.i. of
17 this Order.³⁶

18 This monitoring requirement is premature and is not authorized under Federal stormwater
19 regulations because no outfall monitoring has been conducted to determine if exceedances of
20 TMDLs, MALs, or Federally-mandated constituents have occurred. This type of use-specific
21 monitoring assumes the existence of a pollution problem that has yet to be determined. This and
22 any other monitoring requirement needs to be struck from the Order until outfall monitoring
23 demonstrates that exceedances have occurred and that monitoring specific to complete new
24 development and redevelopment projects is necessary to address such exceedances.

25 **12. Regional Board Violated the Administrative Procedures Act**

26 The Regional Board violated the Administrative Procedures Act (APA) when it issued a
27 revised tentative Order on October 18, 2012. This action resulted in substantial changes that
28 should have triggered a 45-day review and comment period.

35 Urban Stormwater Management in the United States, Committee on Reducing Stormwater Discharge
Contributions to Water Pollution, National Research Council, 2008, page 444.

36 Order, Attachment E – Reporting Program, Page E-39.

1 October 18, 2012, the Regional Board posted a revised tentative Order that contained
2 substantial revisions to the initial tentative Order issued on July 6, 2012. Most salient is the
3 revision to the WMP and the addition of the EWMP.

4 In the July 6th tentative Order, the WMP allows Permittees to achieve compliance with
5 TMDLs by customizing strategies and implementing control measures, and BMPs on a watershed
6 level, *through each Permittee's stormwater management program and/or collectively by all*
7 *participating Permittees.*³⁷ The WMP option also requires a prohibition on causing or contributing
8 to exceedances of RWLs and non-storm water action levels.

9 In the revised tentative Order the WMP was substantially changed and a new compliance
10 option was introduced: the EWMP. The WMP was revised by removing compliance with
11 TMDLs and replacing it with programs to *ensure that controls are implemented to reduce the*
12 *discharge of pollutants to the maximum extent practicable (MEP).*³⁸ The revised WMP also
13 resulted in the deletion of the requirement to ensure that discharges from the MS4 do not cause
14 exceedances of non-stormwater action levels. It was replaced with ensuring that non-stormwater
15 discharges are effectively prohibited.³⁹ There was explanation in the fact sheet posted on October
16 18th of why these revisions were made.

17 The EWMP constitutes a substantial change because it provides an additional compliance
18 option. It offers Permittees the ability to comply with all TMDLs by participating with the Los
19 Angeles County Flood Control District (LACFCD) in doing “multi-benefit” regional projects. The
20 purpose of such projects is to control MS4 discharges of stormwater, if feasible, through a
21 stormwater control design standard that would retain *the 85th percentile, 24-hour storm event for*
22
23

24 ³⁷ Tentative Order, page 45.

25 ³⁸ Revised Tentative Order, page 49.

26 ³⁹ *Ibid.*

27

28

1 *the drainage areas tributary to projects.*⁴⁰ The EWMP would place participating Permittees into
2 compliance with numeric WQBELs (applicable to the outfall) and receiving water limitations.⁴¹

3 The Regional Board should not have adopted the final Order because of its failure to
4 comply with California Administrative Procedures Act (APA), the California Administrative
5 Adjudication Bill of Rights, and other related requirements that afford interested members of the
6 public, including the City, due process. The APA (Gov. Code, §§ 11400, *et seq.*), which includes
7 the California Administrative Adjudication Bill of Rights (Gov. Code, §§ 11425.10, *et seq.*)
8 contains several procedural safeguards that govern these types of adjudicative processes before the
9 Regional Board.

10 Specifically, the Administrative Adjudication Bill of Rights specifies the minimum due
11 process and public interest requirements that must be satisfied in a hearing subject to its provisions,
12 and as applicable to this Petition, requires that “[t]he agency shall give the person to which the
13 agency action is directed notice and an opportunity to be heard, including the opportunity to present
14 and rebut evidence.” (Gov. Code, § 11425.10(a)(l).) The California Code of Regulations governing
15 adjudicative proceedings of the Regional Board contains similar requirements, including the
16 opportunity to present and cross-examine witnesses. (See Cal. Code Regs, tit. 23, §§ 623 *et seq.*)

17 Further, the Regional Board’s decisions must “fully comport with due process”
18 requirements (*see Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th
19 499, 528) and affected parties such as the City must have the opportunity to be heard at a
20 meaningful time and in a meaningful manner. (*Natural Resources Defense Council v. Fish &*
21 *Game Com.* (1994) 28 Cal.App.4th 1104, 1126.) For the opportunity to comment to be considered
22 “meaningful” and, thereby, satisfy due process considerations, the affected party must receive

23
24 _____
⁴⁰ Revised Tentative Order, page 50.

25
26 ⁴¹ It is not clear what receiving water limitations refers to here: compliance with TMDLs, all non-TMDL water
27 quality standards, or with stormwater quality management plans, which is the primary means of complying
28 receiving water limitations according to State Board WQ 99-05.

1 adequate time to prepare a response. (*See Kemp land v. Regents of University of California* (1984)
2 155 Cal.App.3d 644, 649.) The Regional Board, however, failed to satisfy those requirements.

3 It is clear that the revisions made to the revised tentative Order were substantial and not
4 directly related to the original text of June 6th tentative Order. The EWMP constitutes a completely
5 new compliance option, that was mentioned for the first time in the second revised tentative Order,
6 which was posted less than three days before the Order was adopted. A 45 day review and
7 comment period should have been triggered by the introduction of the EWMC, which would have
8 been given affected parties the opportunity to comment on the legality of the proposed alternative
9 and to ask for clarification. The EWMC, which enables compliance with TMDLs by partnering
10 with the LACFCD to do regional projects, may not be legally valid because (1) it has not been
11 identified as a WQBEL (a BMP or a numeric surrogate parameter such as flow or impervious
12 cover) which is the legal means of achieving compliance with TMDL WLAs; and (2) it is not clear
13 if the EWMC is in and of itself a stormwater management plan, which determines compliance with
14 RWLs, or is a sub-set of one. There is also the question of whether an MS4 permit can be used to
15 compel compliance with TMDLs through projects such as infiltration facilities that would be sited
16 outside an MS4. Then there is the issue of cost: how much will the EWMC option cost versus the
17 non-enhanced WMP and individual permittee compliance?

18 Further, the October 18th Order resulted in a substantial revision to the WMC affecting
19 compliance. It changed the compliance requirement from implementing control measures and
20 BMPs on a watershed-level to programs (which is not explained or defined in the revised tentative
21 Order or fact sheet) that would ensure that controls are implemented to reduce the discharge of
22 pollutants to the maximum extent practicable (MEP). This is a substantial revision because it alters
23 how WMP compliance is determined. This revision should have also triggered a new 45 day
24 review and comment period.

25 **13. Order Violates Water Code Section 13241**

26 The Order contains several requirements that exceed Federal stormwater regulations
27 including but not limited to the following:

- 1 • Requiring compliance with TMDL WLAs in the receiving water, albeit Federal
2 regulations only require compliance at the outfall, based on Federally prescribed
3 stormwater discharge monitoring.
- 4 • Requiring compliance with and monitoring of wet weather TMDL WLAs in the
5 receiving water, albeit Federal regulations only require compliance with ambient
6 TMDLs based on a comparative measurement of stormwater discharges from
7 monitoring at the outfall.
- 8 • Requiring compliance with a numeric WQBEL albeit the Regional Board's failure
9 to perform an RPA to justify the need for WQBEL.
- 10 • Requiring compliance with infeasible numeric WQBELs.
- 11 • Requiring compliance with non-stormwater discharge prohibitions applied through
12 and from the outfall as opposed to only to the MS4 per Federal regulations.

13 CWC section 13241 requires a consideration of factors including economic and housing
14 impacts if Order requirements exceed Federal law. No such analysis was performed by the
15 Regional Board.

16 **14. Order Violates Unfunded Funded Mandate Provision of the California**
17 **Constitution**

18 Article XIII B, Section 6 of the California Constitution requires subvention of funds to
19 reimburse local governments for state-mandated programs in specified situations. Notwithstanding
20 the Regional Board's assertion to the contrary, the Order imposes on permittees requirements that
21 exceed Federal regulations which, therefore, constitute unfunded mandates. The Federal
22 regulations that have been exceeded are the same as those that should have triggered a CWC
23 section 13241 analysis.

24 **VIII. ISSUES PREVIOUSLY RAISED**

25 All issues raised in this Petition, substantive and procedural, were presented to the Regional
26 Board at or before the Regional Board acted to adopt the Permit on November 8, 2012, including,
27 but not limited to, through numerous oral and written comments and exhibits submitted by the

1 Petitioner and/or by other Permittees and the public since late 2011 when the Regional Board held
2 workshops concerning renewal of the NPDES MS4 Permit.

3 **IX. NOTICE TO REGIONAL BOARD**

4 As set forth in the attached Proof of Service, this Petition was served upon the following
5 parties via electronic mail and Overnight Mail:

6 Samuel Unger, P.E., Executive Officer
7 Regional Water Quality Control Board
8 320 W. 4th Street, Suite 200
9 Los Angeles, California 90013
10 Fax: (213) 576-6640
11 Email: sunger@waterboards.ca.gov

12 Dated: December 10, 2012

ALESHIRE & WYNDER, LLP
DAVID BOYER

13
14 By: 

15 David Boyer
16 Attorneys for Petitioner
17 City of Irwindale
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On December 10, 2012, I served the within document(s) described as:

PETITION FOR REVIEW; PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR REVIEW OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION'S ADOPTION OF ORDER NO. R4-2012-0175, REISSUING NPDES PERMIT NO. CAS004001

on the interested parties in this action as stated on the attached mailing list.

(BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth on the attached mailing list, with fees for overnight delivery paid or provided for.

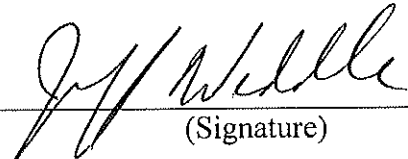
(BY E-MAIL) By transmitting a true copy of the foregoing document(s) via email to each interested party at the email address set forth on the attached mailing list. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

Executed on December 10, 2012, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jeff Weddle

(Type or print name)



(Signature)

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

SERVICE LIST

State Water Resources Control Board, (VIA E-MAIL)
Office of Chief Counsel
Attn: Jeannette L. Bashaw, Legal Analyst
1001 "I" Street
22nd Floor
Sacramento, CA 95814
Fax: (916) 341-5199
jbashaw@waterboards.ca.gov

(VIA E-MAIL AND OVERNIGHT DELIVERY)

Sam Unger
Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Tel. (213) 576-6600
Fax: (213) 576-6640
sunger@waterboards.ca.gov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

320 W. 4th 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

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dischargers | 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) |
| Name of Facility | Municipal Separate Storm Sewer Systems (MS4s) within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach MS4 |
| Facility Address | 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

| Permittee (WDID) | Contact Information | |
|-----------------------------------|--------------------------------------------|-----------------------------------------------------------|
| Agoura Hills (4B190147001) | Mailing Address | 30001 Ladyface Court Agoura Hills, CA 91301 |
| | Facility Contact, Title, and E-mail | 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 th 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 rd 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@lhhcity.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 Keesey, Director of Public Works dkeesey@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 th 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. ¹ |

Table 4. Administrative Information

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| This Order was adopted by the California Regional Water Quality Control Board, Los Angeles Region on: | November 8, 2012 |
| This Order becomes effective on: | December 28, 2012 |
| This Order expires on: | December 28, 2017 |
| 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: | 180 days prior to the Order expiration date above |

¹ 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, 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 |
| Glendora | Pico Rivera | Control District |

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 Act² 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

² 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 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 USEPA³ 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)⁴;
 - d. Natural flows, including:
 - i. Natural springs;

³ 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.

⁴ 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 infiltration⁵;
 - v. Rising ground waters, where ground water seepage is not otherwise covered by a NPDES permit⁶; 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 activities⁷ 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 permit⁸, provided

⁵ 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).)

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

⁷ 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.

⁸ 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 concern⁹ 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 lakes¹⁰;
 - ii. Landscape irrigation;
 - iii. Dechlorinated/debrominated swimming pool/spa discharges¹¹, where not otherwise regulated by a separate NPDES permit;
 - iv. Dewatering of decorative fountains¹²;
 - v. Non-commercial car washing by residents or by non-profit organizations;

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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 water¹³.

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)¹⁴;
 - 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 contribute¹⁵ 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);

¹³ 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.

¹⁴ See note 4.

¹⁵ 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 certifications¹⁶ 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

¹⁶ 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 prohibit¹⁷ 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

¹⁷ 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 concern¹⁸ in the lake.</p> <p>Ensure record-keeping of lake dewatering by the lake owner / operator.</p> |

¹⁸ 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&M) plan, and all relevant portions thereof, including the Irrigation Management Plan.</p> | <p>Discharges must comply with applicable O&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.¹⁹ 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> |

¹⁹ 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.

| | | |
|-----------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>profit organizations</p> | | <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> |
| <p>Street/sidewalk wash water</p> | <p>Discharges allowed after implementation of specified BMPs.</p> | <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 responsible²⁰, 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

²⁰ 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 85th 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 85th 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 85th 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 85th 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 class²¹ 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

²¹ 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 85th 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 85th 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

that specifies the use of green street strategies for transportation corridors within the Permittee's jurisdiction 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.ii.(1) and (2) have been met.
- iii. For Permittees that elect not to implement the conditions under Part VI.C.4.c.i. or Part VI.C.4.c.ii., Permittees shall submit the draft Watershed Management Program no later than 12 months after the effective date of this Order.
 - iv. For Permittees that elect to collaborate on the development of an EWMP, Permittees shall submit the work plan for development of the EWMP no later than 18 months after the effective date of this Order, and shall submit the draft program no later than 30 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area in the watershed:
 - (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 an EWMP that Parts VI.C.4.c.iv.(1) and (2) have been met in greater than 50% of the watershed area.
- d. Until the Watershed Management Program or EWMP is approved by the Regional Water Board or by the Executive Officer on behalf of the Regional Water Board, Permittees that elect to develop a Watershed Management Program or EWMP shall:
 - i. Continue to implement watershed control measures in 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),

- 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,²² 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.

²² 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 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 initiate²³ 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

²³ 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 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) database²⁴ 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

²⁴ 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

| Pollutant-Generating Activity | BMP Narrative Description |
|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| 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 |

| Pollutant-Generating Activity | BMP Narrative Description |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 |
| Pollutant-Generating Activity | BMP Narrative Description from Regional Water Board Resolution No. 98-08 |
| Sidewalk Washing | <ol style="list-style-type: none"> 1. Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and 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. |
| 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 vectors²⁵.
- (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

²⁵ 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 Streets²⁶ (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

²⁶ <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 concern²⁷,
 - (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_v = biofiltration volume

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

SWQDv = the storm water runoff from a 0.75 inch, 24-hour storm or the 85th percentile storm, *whichever is greater*.

Rv = 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 SWQDv, 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:

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

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.

(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 (Mv) 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 85th 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 BMPs²⁸

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 |

²⁸ 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 95th 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 85th 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

| | |
|-----------------------------------|--------------------------------------------|
| Erosion Controls | Scheduling |
| | Preservation of Existing Vegetation |
| Sediment Controls | Silt Fence |
| | Sand Bag Barrier |
| | Stabilized Construction Site Entrance/Exit |
| Non-Storm Water Management | Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | 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

| | |
|-----------------------------|--------------------------------------------|
| Erosion Controls | Scheduling |
| | Preservation of Existing Vegetation |
| Sediment Controls | Silt Fence |
| | Sand Bag Barrier |
| | Stabilized Construction Site Entrance/Exit |
| Non-Storm Management | water Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | 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

| | |
|-----------------------------|--------------------------------------------|
| Erosion Controls | Hydraulic Mulch |
| | Hydroseeding |
| | Soil Binders |
| | Straw Mulch |
| | Geotextiles and Mats |
| | Wood Mulching |
| Sediment Controls | Fiber Rolls |
| | Gravel Bag Berm |
| | Street Sweeping and/ or Vacuum |
| | Storm Drain Inlet Protection |
| | Scheduling |
| | Check Dam |
| Additional Controls | Wind Erosion Controls |
| | Stabilized Construction Entrance/ Exit |
| | Stabilized Construction Roadway |
| | Entrance/ Exit Tire Wash |
| Non-Storm Management | water Vehicle and Equipment Washing |
| | Vehicle and Equipment Fueling |
| | Vehicle and Equipment Maintenance |
| Waste Management | Material Delivery and Storage |
| | Spill Prevention and Control |

Table 15. Additional Enhanced BMPs for High Risk Sites

| | |
|-------------------------|-----------------|
| Erosion Controls | Hydraulic Mulch |
| | Hydroseeding |
| | Soil Binders |
| | Straw Mulch |

| | |
|-----------------------------------|---------------------------------------------------------------------------------------|
| | Geotextiles and Mats |
| | Wood Mulching |
| | Slope Drains |
| Sediment Controls | Silt Fence |
| | Fiber Rolls |
| | Sediment Basin |
| | Check Dam |
| | Gravel Bag Berm |
| | Street Sweeping and/or Vacuum |
| | Sand Bag Barrier |
| | Storm Drain Inlet Protection |
| Additional Controls | Wind Erosion Controls |
| | Stabilized Construction Entrance/Exit |
| | Stabilized Construction Roadway |
| | Entrance/Exit Tire Wash |
| | Advanced Treatment Systems |
| Non-Storm water Management | 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 |
| Waste Management | 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 ²⁹ , (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 ³⁰ | |
| 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

²⁹ www.srh.noaa.gov/forecast

³⁰ 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 Development³¹ and Vertical Construction³²

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 Stabilization³³

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.

³¹ 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.

³² The build out of structures from foundations to roofing, including rough landscaping.

³³ 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

| General and Activity Specific BMPs | |
|---------------------------------------------|--------------------------------------------------------------------|
| General BMPs | 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 |
| Flexible Pavement | Asphalt Cement Crack and Joint Grinding/ Sealing |
| | Asphalt Paving |
| | Structural Pavement Failure (Digouts) Pavement Grinding and Paving |
| | Emergency Pothole Repairs |
| | Sealing Operations |
| Rigid Pavement | Portland Cement Crack and Joint Sealing |
| | Mudjacking and Drilling |
| | Concrete Slab and Spall Repair |
| Slope/ Vegetation Drains/ | Shoulder Grading |
| | Nonlandscaped Chemical Vegetation Control |
| | Nonlandscaped Mechanical Vegetation Control/ |

| General and Activity Specific BMPs | |
|-------------------------------------------|------------------------------------------------------------------------------|
| | 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 |
| Litter/ Debris/ Graffiti | Sweeping Operations |
| | Litter and Debris Removal |
| | Emergency Response and Cleanup Practices |
| | Graffiti Removal |
| Landscaping | 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 |
| Environmental | Storm Drain Stenciling |
| | Roadside Slope Inspection |
| | Roadside Stabilization |
| | Stormwater Treatment Devices |
| | Traction Sand Trap Devices |
| Bridges | Welding and Grinding |
| | Sandblasting, Wet Blast with Sand Injection and Hydroblasting |
| | Painting |
| | Bridge Repairs |
| Other Structures | Pump Station Cleaning |
| | Tube and Tunnel Maintenance and Repair |
| | Tow Truck Operations |
| | Toll Booth Lane Scrubbing Operations |
| Electrical | Sawcutting for Loop Installation |
| Traffic Guidance | 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 |
| Storm Maintenance | Minor Slides and Slipouts Cleanup/ Repair |
| Management and Support | Building and Grounds Maintenance |
| | Storage of Hazardous Materials (Working Stock) |
| | Material Storage Control (Hazardous Waste) |

| General and Activity Specific BMPs | |
|-------------------------------------------|---------------------------------------------------------|
| | 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 NOAA³⁴, (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

³⁴ 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 water³⁵ 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 BMPs³⁶

| 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.

³⁵ See Attachment A.

³⁶ 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 rainfall³⁷ 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:

³⁷ 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),³⁸ 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

³⁸ 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 85th 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)³⁹;
- (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 85th 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;

³⁹ 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."⁴⁰
- (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.

⁴⁰ 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*.⁴¹
- (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.⁴² 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.⁴³ The DGR shall be determined from direct measurement of trash deposited in the drainage area during any thirty-day period between June 22nd and September 22nd exclusive of rain events⁴⁴, 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

⁴¹ 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*.

⁴² Performance shall be demonstrated under different conditions (e.g. low to high trash loading).

⁴³ 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.

⁴⁴ 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.⁴⁶ 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.⁴⁷ 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

⁴⁵ Between June 22nd and September 22nd

⁴⁶ Amount of trash shall refer to the uncompressed volume (in gallons) or drip-dry weight (in pounds) of trash collected.

⁴⁷ Any negative values shall be considered to represent a zero discharge.

⁴⁸ 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.



July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150

Subject: Tentative MS4 Order Comments

Dear Mr. Ridgeway:

For your consideration, the City of Irwindale is pleased to submit the attached comments regarding Order No. R4-2012-XXXX NPDES Permit No. CAS004001.

Please note that the City also supports comments submitted to you from the Los Angeles Stormwater Permit (LASP) group. The City's comments are intended to compliment and address more specifically the issues raised in the LASP group letter. Additionally, the City's comment letter contains other issues not addressed in the LASP group letter.

We thank you for the opportunity to submit comments on this very important matter. Should you have any questions, please feel free to call me at 626/430-2211.

Sincerely,

Loretta Corpis
Management Analyst



**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is "a" because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

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

According to Clean Water Act §502, effluent monitoring 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.*

40 CFR §122.2 defines a point source as:

... 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 which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes "b" and "c" no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee's discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee's discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as "a" is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding “a,” This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to “b”, see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding “c”, as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding “d”, this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4’s pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies "*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*"

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*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.*

"Effluent monitoring," according to Clean Water Act §502, 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.*

40 CFR §122.2, defines a point source as:

... 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 which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

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.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit’s limitations*. It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made

it clear that: we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

*require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."*⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

3. **The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.**
 - a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond "to" the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL

⁷ See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not, as the tentative order's fact sheet asserts, include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

**Comments Regarding Los Angeles MS4 Tentative Order No. R4-2012-XXXX
NPDES PERMIT NO. CAS004001 (issue date unspecified)
Attachment E: Monitoring and Reporting Plan**

1. Receiving Water Monitoring

The purpose of receiving water monitoring is to:

- a. *Determine whether the receiving water limitations are being achieved,*
- b. *Assess trends in pollutant concentrations over time, or during specified conditions,*
- c. *Determine whether the designated beneficial uses are fully supported as determined by water chemistry, as well as aquatic toxicity and bioassessment monitoring.*

Receiving water monitoring is to be performed at various in-stream stations.

At issue is "a" because it serves to determine compliance with receiving water limitations. The Regional Board has no legal authority to compel compliance with receiving water limitations through in-stream monitoring. Monitoring requirements relative to MS4 permits are limited to effluent discharges and the ambient condition of the receiving water, as §122.22(C)(3) clearly indicates:

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

According to Clean Water Act §502, effluent monitoring 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.*

40 CFR §122.2 defines a point source as:

... 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 which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In short, effluent monitoring in a receiving water because cannot be required because it lies outside the bounds of the outfall.

Regarding monitoring purposes "b" and "c" no argument is raised here provided that it is understood that assessing trends in pollution concentrations would be: (1) limited to ambient water quality monitoring; and (2) permittees shall be not responsible for funding such monitoring. With respect to the latter, the Regional Board's surface water ambient monitoring program (SWAMP) should be charged with this responsibility. MS4 permittees fund SWAMP activities through an annual surcharge levied on annual MS4 permit fees.

Recommended Corrective Action: Delete 1(a) and make it clear that 1(b) and (c) relate to ambient monitoring that is not the responsibility of MS4 permittees.

2. Stormwater Outfall Based Monitoring

The purpose of stormwater outfall based monitoring – including TMDL monitoring -- is to:

- a. *Determine the quality of a Permittee's discharge relative to municipal action levels, as described in Attachment G of this Order,*
- b. *Determine whether a Permittee's discharge is in compliance with applicable wet weather WQBELs derived from TMDL WLAs,*
- c. *Determine whether a Permittee's discharge causes or contributes to an exceedance of receiving water limitations.*

Insofar as "a" is concerned, outfall monitoring for stormwater for attainment of municipal action levels (MALs) would be acceptable were it not for their purpose. MALs represent an additional monitoring requirement for non-TMDL pollutants. MALs should really be used to replace TMDL WLAs as alternatives to addressing receiving water quality. As noted in the National Research Council Report to USEPA:

*The NSQD (Pitt et al., 2004) allows users to statistically establish action levels based on regional or national event mean concentrations developed for pollutants of concern. The action level would be set to define unacceptable levels of stormwater quality (e.g., two standard deviations from the median statistic, for simplicity). Municipalities would then routinely monitor runoff quality from major outfalls. **Where an MS4 outfall to surface waters consistently exceeds the action level, municipalities would need to demonstrate that they have been implementing the stormwater program measures to reduce the discharge of pollutants to the maximum extent practicable.** The MS4 permittees can demonstrate the rigor of their efforts by documenting the level of implementation through*

measures of program effectiveness, failure of which will lead to an inference of noncompliance and potential enforcement by the permitting authority

Instead of following the above Regional Board staff has chosen to create another monitoring requirement, without regard for cost or benefit to water quality or to permittees. Non-TMDL pollutants should not be given special monitoring attention until it has been determined that they pose an impairment threat to a beneficial use. Such a determination needs to be done by way of ambient monitoring performed by the Regional Board SWAMP. The resulting data could then be used to develop future TMDLs if necessary.

Furthermore, many of the MAL constituents (both stormwater and non-storm water) listed in Appendix G, are included in several TMDLs such as metals and bacteria. This is, of course, a consequence of the redundancy created by two approaches that are intended to serve the same purpose: protection of water quality.

Recommended Correction: Either require substitution of TMDLs with MALs or eliminate MALs entirely.

As for stormwater outfall monitoring purpose "b", such monitoring cannot be used to determine compliance with **wet weather WQBELs based on TMDL WLAs** for the following reasons:

1. The wet-weather WQBEL is based on a TMDL WLA in the receiving water that is non-ambient. As mentioned, federal regulations only require ambient monitoring in the receiving water, which by definition can never be deemed the same as wet weather monitoring. They are mutually exclusive. Regional Board staff has also incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a "numeric effluent limitation." Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board's clear opposition to numeric effluent limitations.

In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.*

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

2. The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Regarding purpose "b" it should also be noted that the Regional Board's setting of WQBELs to translate the TMDL WLA in the receiving water to the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit's fact sheet. According to USEPA's NPDES Permit Writers' Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

¹United States Environmental Protection Agency, NPDES Permit Writers' Manual, September, 2010, page 6-30.

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis.

Complicating the performance of a reasonable potential analysis is the absence of (1) outfall monitoring data; and (2) ambient water quality standards. Though federal regulations require monitoring at the outfall, the Regional Board has not required it up until now. Even if outfall monitoring data were available to determine whether pollutants concentrations in the discharge exceeded the water quality standard is not possible. This is because, as mentioned earlier, TMDL WLAs are not expressed as ambient standards. A TMDL is an enhanced water quality standard. As noted in the National Research Council's *Assessing the TMDL Approach to Water Quality Management*, a report commissioned by the United States Congress in 2001:

... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.

Recommended Correction: Eliminate this requirement.

Regarding purpose "c", the determinant for a water quality standard exceedance is in the discharge from the outfall – not in the receiving water. The use of numeric WQBELs -- though incorrectly defined and established in this instance -- represents the compliance standard in discharges from the outfall. Adding a second compliance determinant in the receiving water is unnecessary and is not authorized under federal stormwater regulations because the receiving water lies outside the scope of the MS4.

Recommended Corrective Action: Eliminate this requirement.

3. Non-storm water outfall based monitoring

The purposes of this type of monitoring are as follows:

- a. *Determine whether a Permittee's discharge is in compliance with applicable dry weather WQBELs derived from TMDL WLAs.*
- b. *Determine whether a Permittee's discharge exceeds non-storm water action levels, as described in Attachment G of this Order,*
- c. *Determine whether a Permittee's discharge contributes to or causes an exceedance of receiving water limitations,*

d. *Assist a Permittee in identifying illicit discharges as described in Part VI.D.9 of this Order.*

Regarding "a," This requirement is redundant in view of the aforementioned MALs and in any case is not authorized under federal stormwater regulations. 402(p)(B)(ii) of the Clean Water Act only prohibits discharges to the MS4 (streets, catch basins, storm drains and intra MS4 channels), not through or from it. This applies to all water quality standards, including TMDLs. Nevertheless, compliance with dry weather WQBELs can be achieved through BMPs and other requirements called for under the illicit connection and discharge detection and elimination (ICDDE) program, or requiring impermissible non-stormwater discharges to obtain coverage under a permit issued by the Regional Board.

Recommended Correction: Delete this requirement and specify compliance with dry weather WLAs, expressed in ambient terms, through the implementation of the ICDDE program.

Withy regard to "b", see previous responses regarding MALs and the limitation of non-stormwater discharge prohibit to the MS4.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4; and determine whether MALs or TMDLs are to be used to protect receiving water quality.

Regarding "c", as mentioned, non-stormwater discharges cannot by applied to receiving water limitations because of they are only prohibited to the MS4, not from or through it.

Recommended Correction: Delete this requirement because it exceeds the non-stormwater discharge prohibition to the MS4.

Regarding "d", this requirement is reasonable and in keeping with federal regulations with the exception that the identification of illicit discharges must adhere to the field screening requirements in CFR 40 §122.26. No non-stormwater discharge monitoring shall occur unless flow is first discovered at the outfall. This would trigger the implementation of additional requirements that the tentative order does not include.

4. New Development/Re-development effectiveness monitoring

The purpose of this requirement is a dubious and is not authorized under federal stormwater regulations as it relates to monitoring. To begin with, requiring such monitoring is premature given the absence of outfall monitoring in the current and previous MS4 permits that would characterize an MS4's pollution contribution relative to exceeding ambient water quality standards. Without the determination of statistically significant exceedances of water quality standards, detected at the

outfall, the imposition of runoff infiltration requirements is arbitrary. Further, there is nothing in federal stormwater regulations that require monitoring on private or public property. Monitoring, once again, is limited to effluent discharges at the outfall and to ambient monitoring in the receiving water.

Beyond this, monitoring for BMP effectiveness poses a serious challenge to what determines "effectiveness" -- effective relative to what standard? It is also not clear how such monitoring is to be performed.

Recommended Correction: Delete this requirement.

The MRP of the tentative order proposes regional studies "*to further characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. Regional studies shall include the Southern California Stormwater Monitoring Coalition (SMC) Regional Watershed Monitoring Program (bio-assessment), sediment monitoring for Pyrethroid pesticides, and special studies as specified in approved TMDLs (see Section XIX TMDL Reporting, below).*"

Regional studies also lie outside the scope of the MS4 permit. However, because federal regulations require ambient monitoring in the receiving water, a task performed by the Regional Board's SWAMP, regional watershed monitoring for aforementioned target pollutants can be satisfied through ambient monitoring. This can be accomplished with little expense on the part of permittees by: (1) using ambient data generated by the Regional Board SWAMP; (2) re-setting the County's mass emissions stations to collect samples 2 to 3 days following a storm event (instead of using a flow-based sampling trigger); and (3) using any data generated from existing coordinated monitoring programs (e.g., Los Angeles River metals TMDL CMP), provided that the data is truly ambient.

END COMMENTS

1. **Numeric Water Quality Based Effluent Limitations (WQBELs) applied to dry and wet weather Total Maximum Daily Load (TMDLs) waste load allocations (WLAs) and to stormwater and non-stormwater municipal action levels (MALs) are not authorized under federal stormwater regulations and are not in keeping with State Water Resources Control Board (State Board) water quality orders (WQOs).**

The tentative order specifies that: *Each Permittee shall comply with applicable WQBELs as set forth in Part VI.E of this Order, pursuant to applicable compliance schedules.* The tentative order specifies two categories of WQBELs, one for USEPA adopted TMDLs and one for Regional Board/State adopted TMDLs. Regarding USEPA adopted TMDLs, it appears that BMP-WQBELs may be used to meet TMDL WLAs in the receiving water. For Regional Board/State-adopted TMDLs, the tentative order specifies a different compliance method: meeting a “numeric” WQBEL which is derived directly from the TMDL waste load allocation. For example, the wet weather numeric WQBEL for dissolved copper for the Los Angeles River is 17 ug/l.

- a. Issue: *Regional Board staff is premature in requiring any kind of WQBEL because no exceedance of any TMDL WLA at the outfall has occurred.* This is because outfall monitoring is not a requirement of the current MS4 permit or previous MS4 permits.

The Regional Board’s setting of WQBELs – any WQBEL -- to translate the TMDL WLA for compliance at the outfall is premature. Regional Board staff apparently has not performed a reasonable potential analysis as required under § 122.44(d)(1)(i), which states:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.”

No such reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet. According to USEPA’s NPDES Permit Writers’ Manual:

Permit writers should document in the NPDES permit fact sheet the process used to develop WQBELs. The permit writer should clearly identify the data and information used to determine the applicable water quality standards and how that information, or any applicable TMDL, was used to derive WQBELs and

explain how the state's anti-degradation policy was applied as part of the process. The information in the fact sheet should provide the NPDES permit applicant and the public a transparent, reproducible, and defensible description of how the permit writer properly derived WQBELs for the NPDES permit.¹

The fact sheet accompanying the tentative order contains no reference to a reasonable potential analysis -- a consequence of the fact that no outfall monitoring has been required of the Regional Board either in the current or previous MS4 permits for Los Angeles County. Outfall monitoring is a mandatory requirement under federal regulations at CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

*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.*

"Effluent monitoring," according to Clean Water Act §502, 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.*

40 CFR §122.2, defines a point source as:

... 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 which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Conclusion: Because Regional Board staff has not required outfall monitoring, it could have not have detected an excursion above a water quality standard (includes TMDL WLAs). Therefore, it could not have conducted a reasonable potential analysis and, as further consequence, cannot require compliance with a WQBEL (numeric or BMP-based) or with any TMDL or MAL until those burdens have been met.

Recommended Correction: Eliminate all reference to comply with WQBELs until outfall monitoring and a reasonable potential analysis have been performed.

¹United States Environmental Protection Agency, *NPDES Permit Writers' Manual*, September, 2010, page 6-30.

- b. Issue: Even if Regional Board staff conducted outfall monitoring and detected an excursion above a TMDL WLA and performed the requisite reasonable potential analysis, it cannot require a numeric WQBEL strictly derived from the TMDL WLA.

USEPA's 2010 guidance memorandum mentions that numeric WQBELs are permissible only if feasible.² This conclusion was reinforced by a memorandum from Mr. Kevin Weiss, Water Permits Division, USEPA (Washington D.C.). He explains:

*Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or percentage or amount of impervious cover." In the context of the 2010 memorandum, the term "numeric effluent limitation" should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.*³

Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis.

In any case, the feasibility of numeric WQBELs, whether strictly derived from TMDL WLAs or of the surrogate parameter type, the State Water Resources Control Board has determined that numeric effluent limitations are not feasible. In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: *we will generally not require "strict compliance" with water quality standards through numeric effluent*

²Memorandum from James A. Hanlon, Director, Office of Waste Management, Revisions to the November 22, 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*, November 12, 2010, page

³Memorandum from Kevin Weiss, Water Permits Division, USEPA (Washington D.C.), March 17, 2011.

limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.

[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]

More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft order:

Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.

The State Board's decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the *Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.*

Conclusion: The Regional Board does not have the legal authority to require numeric WQBELs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

- c. Issue: There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).

The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes. Federal stormwater regulations only prohibit discharges to the MS4 and limits outfall monitoring to stormwater discharges. This is explained in greater detail under 4. *Non-stormwater Discharge Prohibitions.*

Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.

Recommended Correction: Eliminate all references to comply with numeric WQBELs.

2. **The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA.**

- a. Issue: The proposed RWL language changes the “exceedance” determinant from water quality standards and objectives to receiving water limitations, thereby increasing the stringency of the requirement. The tentative order RWL version reads: *Discharges from the MS4 that cause or contribute to the violation of **receiving water limitations** are prohibited.*

Compare this with what is in the current MS4 permits for Los Angeles and Ventura Counties:

*Discharges from the MS4 that cause or contribute to a violation of **water quality standards** are prohibited.*

Whereas standard RWL language limits water quality standards to what is in the basin plan, and includes water quality objectives (relates to waters of the State), the tentative order uses revised language that replaces water quality standards with the following receiving water limitation criteria:

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.

It is unclear why Regional Board staff has removed water quality standards, which is a USEPA and State Board requirement, and replaced them with the more global receiving water limitation language that include additional compliance criteria (e.g., “or federal regulations including but not limited to 40 CFR § 131.38”). Other “federal regulations” could include CERCLA (Comprehensive Environmental Remediation and Compensation Liability Act).

Enlarging the scope of the RWL from water quality standards to a universe of other regulatory requirements exceeds RWL limitation language established in State Board WQO 99-05, a precedential decision. The order bases compliance on discharge prohibitions and receiving water limitations on the *timely implementation of control measures and other action in the discharges in accordance with the SWMP (stormwater management plan) and other requirements of the permit's limitations.* It goes on to say that if exceedances of water quality standards or water quality objectives, collectively referred to as water quality standards

continues, the SWMP shall undergo an iterative process to address the exceedances. It should be noted that this language was mandated by USEPA.

It should be noted that the draft Caltrans MS4 permit is scheduled for adoption in September, as well as CASQA, proposes RWL language that is in keeping with WQO 99-05.

Conclusion: Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.

Recommended Correction: Replace RWL contained in the tentative order with the CASQA model or with language contained in the draft Caltrans MS4 permit.

- b. Issue: By eliminating water quality standards, the tentative order has created a separate compliance standard for TMDLs and for non-TMDLs. Standard RWL language in other MS4 permits designates the SWMP⁴ as the exclusive determinant for achieving water quality standards in the receiving water. Since TMDLs are enhanced water quality standards, the SWMP (or in this case the SQMP) should enable compliance with TMDLs. Instead, the tentative order specifies compliance through implementation plans – including plans that were discussed in several State/Regional Board adopted TMDLs (e.g., the Los Angeles River Metals TMDL). The absence of water quality standards also creates a separate compliance standard for non-TMDLs. According to Regional Board staff, minimum control measures (MCMs) which make up the SQMP, are intended to meet non-TMDLs pollutants. Unclear is what defines non-TMDL pollutant. If there are no water quality standards referenced in the RWL then what are the non-TMDL pollutants that the MCMs are supported to address?

There is no authority under federal stormwater regulations to comply with any criterion other than water quality standards. The RWL language called-out in WQO 99-05, which was in response to a USEPA directive, makes it clear that water quality standards represent the only compliance criteria, not an expanded definition of receiving water limitations that exclude such criteria.

MS4 permits throughout the State include TMDL WLAs. None of them, however, has created a compliance mechanism that excludes water quality standards as a means of attaining them. Further, the State Board has, through the draft Caltrans MS4 permit and the draft Phase II MS4 permit, articulated its policy on compliance with water quality standards:

⁴USEPA and federal stormwater regulations use stormwater management program whereas the Los Angeles County MS4 permit uses stormwater quality management plan (SQMP). In effect they are the same. They consist of 6 core programs that must be implemented through MS4 permit.

they are to be met through the implementation of stormwater management programs. Equally noteworthy is that State Board has not created a dual standard for dealing with TMDLs and non-TMDLs. This is an obvious consequence of its adherence to WQO 99-05.

With regard to implementation plans contained in TMDLs, the Regional Board has no legal authority to include them into the MS4 permit. This issue discussed in greater detail later in these comments.

Conclusion: The tentative order must be revised to restore water quality standards in RWL language and, by extension, enable compliance with TMDLs and other water quality standards through the SQMP/MCMs.

Recommended Correction: Revise the tentative order to eliminate any reference to complying with anything else except water quality standards through the SQMP; and, therewith, eliminate any reference to complying with implementation plans contained in State/Regional Board TMDLs.

3. The tentative order does not include the iterative process, a mechanism that is integral to RWL language which serves to achieve compliance with water quality standards.

- a. Issue: The absence of the iterative process disables a safeguard to protect permittees against unjustifiably strict compliance with water quality standards – or in this case the expanded definition of receiving water limitations -- that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.

Despite the fact RWL language in MS4 permits since the 90's have provided a description of an iterative process (the BMP adjustment mechanism), the term "iterative process" has only recently been specifically mentioned in them. The absence of this term resulted in the 9th Circuit Court Appeal's conclusion in *NRDC v. Los Angeles County Flood Control District* that there is no "textual support" in the current MS4 permit for the existence of an iterative process. This resulted in the court's conclusion that the LACFCD had exceeded water quality standards in the hardened portions of the Los Angeles and San Gabriel Rivers. More recent MS4 permit's issued in the State contain clear references to the iterative process.

Notwithstanding the absence of water quality standards in the tentative order, the iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008, wherein the State Board made it clear that: we will

generally not require "strict compliance" with water quality standards through numeric effluent limitations," and instead "we will continue to follow an iterative approach, which seeks compliance over time" with water quality standards.

Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process. The draft Caltrans MS4 permit refers to the iterative process in two places: finding 20, Receiving Water Limitations and in the Monitoring Results Report. Finding 20 states:

The effect of the Department's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires the Department to implement a storm water program designed to achieve compliance with water quality standards, over time through an iterative approach. If discharges are found to be causing or contributing to an exceedance of an applicable Water Quality Standard, the Department is required to revise its BMPs (including use of additional and more effective BMPs).⁵

Under the Monitoring Results Report section, the draft Caltrans MS4 permit reiterates the iterative process within the context of the following: *The MRR shall include a summary of sites requiring corrective actions needed to achieve compliance with this Order, and a review of any iterative procedures (where applicable) at sites needing corrective actions.*⁶

The draft Phase II MS4 references the iterative process in two places, in finding 35 and under its definition of MEP. Finding 35 states:

This Order modifies the existing General Permit, Order 2003-0005-DWQ by establishing the storm water management program requirements in the permit and defining the minimum acceptable elements of the municipal storm water management program. Permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of Storm Water Management Plans (SWMPs).

The draft Phase II MS4 permit also acknowledges the iterative process through the definition of maximum extent practicable (which is also included in the draft Caltrans MS4 permit), to the following extent:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP

⁵See draft Caltrans MS4 permit (Tentative Order No. 2012-XX-DWQ NPDES No. CAS000003), page 10.

⁶Ibid., page 35.

development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."⁷

It should be clearly understood that the State Board is articulating clear policy on the iterative process through these two draft MS4 permits and that they must be followed by Regional Boards as subordinate jurisdictions.

Conclusion: The Regional Board has no authority to alter the iterative process/procedure by making a revised and diluted version of it available only to those MS4 permittees that wish to opt for watershed management program participation. Quite the contrary, the Regional Board is legally compelled to make the iterative process, as described herein, an undeniable requirement in the tentative order.

Recommended Correction: Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.

4. The tentative order incorrectly articulates the non-stormwater discharge prohibition to the MS4 to include discharges from and through it.

- a. Issue: The tentative order mentions prohibiting non-stormwater discharges not only to the MS4 but from and through it as well. Federal regulations did not authorize the non-stormwater discharge prohibition to go beyond "to" the MS4. This is a serious issue because extending the prohibition from or through the MS4 would subject non-stormwater discharges (including dry weather TMDL WLAs and non-stormwater municipal action levels) to pollutant limitations at the outfall.

The tentative order attempts to justify interpreting federal stormwater regulations to mean that non-stormwater discharges are prohibited not only to the MS4 but from it and through it as well by: (1) incorrectly stating the Clean Water Act §402(p)(B)(ii) of the Clean Water Act requires permittees effectively prohibit non-storm water discharges into

⁷See State Water Resources Control Board Water Quality Order No. XXXX-XXXX-DWQ, NPDES General Permit No. CASXXXXXX, page

watercourses (means receiving waters) as well as to the MS4; and (2) a misreading of Federal Register Volume 55, No. 222, 47990 (federal register) which contains an error with regard to the non-stormwater discharge prohibition.

§402(p)(B)(ii) does not (as the tentative order's fact sheet asserts) include watercourses, which according to Regional Board staff, means waters of the State and waters of the United States, both of which lie outside of the MS4. The original text of §402(p)(B)(ii) actually reads as follows: *Permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."*⁸ There is no mention of watercourses.

The tentative order's fact sheet also relies on the afore-cited federal register which states: *402(p)(B)(3) requires that permits for discharges from municipal storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal storm sewer.* The fact sheet is correct about this. The problem is that the federal register is wrong here. It confuses 402(p)(B)(3), which addresses stormwater (not non-stormwater) discharges from the MS4, with 402(p)(B)(2), which once again prohibits non-stormwater discharges to the MS4. It should be noted that in the same paragraph above the defective federal register language, it says that ... *permits are to effectively prohibit non-storm water discharges to the municipal separate storm sewer system.*

In any case, this issue has been resolved since the federal register was published in November of 1990. All MS4 permits in the United States issued by USEPA prohibit non-stormwater discharges only to the MS4. USEPA guidance, such as the *Illicit Discharge Detection and Elimination: A Guidance Manual* bases investigation and monitoring on non-stormwater discharges being prohibited to the MS4. And, with the exception of Los Angeles Regional Board MS4 permits, MS4 permits issued by other Regional Boards also limit the MS4 discharge prohibition to the MS4. Beyond this, the draft Caltrans MS4 permit and draft Phase II MS4 permits also limit the non-stormwater prohibition to the MS4.

Conclusion: The Regional Board does not have the legal authority to extend the non-stormwater discharge prohibition from or through the MS4.

Recommended Correction: Revise the non-stormwater discharge prohibition to be limited to the MS4 only and delete all requirements that are based on the prohibition from or through the MS4. This includes the non-stormwater prohibition that is linked to CERCLA.

⁸Municipal storm sewers is a truncated version of municipal separate stormwater system (MS4).

5. The tentative order proposes to incorporate TMDL implementation plans, schedules, and monitoring requirements without legal authority.

- a. Issue: Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.

The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.

In any case, the Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required *to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*. The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.

In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented

from being placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is 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.

The natural concentration of water quality constituents can only mean the state of a receiving water when it is not raining. This is further supported by the phrase "prior to mixing of either point or non-point source load of contaminants," which can only mean stormwater discharges from an outfall. In other words, stormwater discharges from an outfall cannot be mixed with a receiving water during a storm event because the ambient condition would be lost. Outfall monitoring of stormwater discharges is evaluated against the ambient condition of pollutant constituents in the receiving water for the ostensible purpose of determining its pollutant contribution.

Conclusion: The tentative order lacks the legal authority to include TMDL implementation plans, schedules, or monitoring plans adopted as basin plan amendments. No permittee, subject to any TMDL that requires an implementation plan, schedule, or monitoring plan can be compelled to comply with any of them. Further, even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no need for a TSO.

Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order.

6. The tentative order contains references to the federal Comprehensive Environmental Remediation Compensation and Liability Act (CERCLA) that would make them additional regulatory requirements.

- a. Issue: The non-stormwater discharge prohibition under the tentative order states:

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).

At first blush, the CERCLA provision appears innocuous. But what if non-stormwater discharge is not authorized under CERCLA? Conceivably the MS4 permittee could be held responsible for those discharges. And because CERCLA is referenced in the MS4 permit, it could become a potential third party litigation issue. The inclusion of the CERCLA provision is even more suspect when considering that no other MS4 in the State contains such a reference. Beyond this, how would a permittee know if a discharge is one covered under CERCLA?

Conclusion: CERCLA is an unnecessary reference in the MS4 permit and has the potential to expose permittees to third party litigation. Further, the non-stormwater discharge prohibition only "to" the MS4 makes this issue academic. A permittee's only responsibility is to prohibit impermissible non-stormwater to the MS4, not through or from it; or to require the discharger to obtain permit coverage.

7. The tentative order, under the effluent limitations section, contains technical effluent based limitations (TBELs) which typically are not included in MS4 permits and, in this particular case, does not appear to be purposeful.

- a. Issue: Part IV.A.1 of the tentative order states that TBELs shall reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP).

It is not clear as to the reason for including TBELs into the tentative order because they are generally not required of Phase MS4 permits. TBELs are referenced in the tentative order, but are not found under section 402(p), which addresses storm water, nor anywhere else in federal regulations. It is a term used to collectively refer to best available technologies, but again not in 402(p).

TBEL is a term USEPA uses to denote the following: (1) Best Practical Control Technology Currently Available (BPT); (2) Best Conventional Pollutant Control Technology (BCT); and (3) Best Available Technology Economically Achievable (BAT). Since these provisions were established prior to stormwater provisions of the CWA §402(p), they were applied to industrial waste-water discharges (including construction activity which is an industrial category sub-set). A clarifier connected to the sewer system is a type of TBEL. POTWs are subject to TBELs example primary and secondary treatment.

According USEPA guidance:

*WQBELs are designed to protect water quality by ensuring that water quality standards are met in the receiving water. On the basis of the requirements of Title 40 of the Code of Federal Regulations (CFR) 125.3(a), additional or more stringent effluent limitations and conditions, such as WQBELs, are imposed when TBELs are not sufficient to protect water quality.*⁹

Since the MS4 permit proposes WQBELs (adapted to meet water quality standards at the outfall), it would appear that TBELs are irrelevant. In essence, the proposed WQBELs is an admission from Regional Board staff that TBELs are not sufficient to protect water quality.

Please note that the draft Caltrans and Phase II MS4 permits do not reference TBELs.

Conclusion: Clarification is needed to determine the purpose of referencing TBELs in the tentative order.

Recommended Correction: Either provide clarification and a justification requiring TBELs given that the tentative order requires WQBELs, a more stringent requirement. If clarification or justification cannot be provided, the TBEL provision should be removed.

8. Minimum Control Measures (MCMs)

a. Issue: Generally, MCMs should not be detailed in the tentative order. Instead, specific BMPs and other information should be placed in the Stormwater Quality Management Plan (SQMP), which is the case under the current MS4 permit. Federal guidance specifies that the core programs are to be implemented through the SQMP as a means of meeting water quality standards. More importantly, placing the specifics in the SQMP makes it easier to revise. If specific BMPs remain in the tentative order, and they are in error or need to be revised (e.g., to set BMP-WQBELs), a re-opener would be required. For example, in Part I. *Facility Information, Table 2.*, the permittee contact information is out of date. It would be better to place this and other detailed information in the SQMP where it can be updated regularly without having to re-open the permit.

b. Issue: SUSMP

The tentative order replaces the Development Planning/SUSMP with Planning and Land Development Program. However, the SUSMP is mandated through a precedent-setting WQO issued by the State Board. Nothing in the order's fact sheet provides an explanation of why the SUSMP needs to be replaced. So doing would incur an unnecessary cost

⁹NPDES Permit Writers' Manual, September, 2010, page 5-40.

to revise the SQMP and SUSMP guidance materials. This is not to suggest that the Regional Board may not, in the final analysis, have the legal authority to change the SUSMP to its MCM equivalent. Nevertheless, it would be helpful from an administrative convenience standpoint to explain the need for the change in the fact sheet. It could be argued that the low impact development (LID) techniques have been successfully implemented through the SUSMP program for over five years.

- c. Issue: Retrofitting existing developments through the Land Use Development Program is not authorized under federal stormwater regulations. CFR 40 122.26 only authorizes retrofitting with respect to flood control devices which is to be explained in the MS4 permit as the following indicates:

A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

- d. Issue: The MCMs in the tentative order require off-site infiltration for groundwater recharge purposes. The tentative order is a stormwater permit, not a groundwater permit. As mentioned, 402(p)(3)(iii) of the Clean Water Act:

Permits ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

The use of other infiltration controls that do not promote groundwater recharge have already demonstrated effectiveness in significantly reducing pollutants to the maximum extent practicable (MEP). Requiring infiltration anywhere for the purpose of recharging groundwater exceeds the scope of the MS4 since infiltrating to such an extent would add costs to the developer or permittee without significantly improving pollutant removal performance. Further, this requirement is unwarranted and premature because of the absence of outfall monitoring data that would demonstrate the need for groundwater-recharge oriented infiltration controls to address water quality standards and TMDLs vis-à-vis their intended purpose of protecting beneficial uses in a receiving water.

Conclusion: Requiring infiltration controls to facilitate groundwater recharge is not authorized under federal stormwater regulations. Further, many permittees are situated upstream of spreading grounds and other macro-infiltration basins that would obviate the need for this requirement.

Recommended Correction: Eliminate this requirement from the order.

9. The Maximum Extent Practicable (MEP) definition needs to be revised to reflect is updated definition found in the draft Phase II MS4 permit and in the draft Caltrans MS4 permit.

- a. Issue: The order's MEP reference is a carry-over from the 2001 MS4 permit. A great deal has happened over the decade to warrant an update. Fortunately, the State Board, through the draft Phase II and Caltrans MS4 permits, has revised the MEP definition to be in keeping with current realities. To that end it has proposed the following definition:

MEP standard requires Permittees apply Best Management Practices (BMPs) that are effective in reducing or eliminating the discharge of pollutants to the waters of the U.S. MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering storm water runoff. MEP may require treatment of the storm water runoff if it contains pollutants. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. BMP development is a dynamic process and may require changes over time as the Permittees gain experience and/or the state of the science and art progresses. To do this, the Permittees must conduct and document evaluation and assessment of each relevant element of its program, and their program as a whole, and revise activities, control measures/BMPs, and measurable goals, as necessary to meet MEP. MEP is the cumulative result of implementing, evaluating, and creating corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate BMPs are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the "iterative approach."¹⁰

Conclusion: The order's MEP is out of data and inconsistent with State Board policy.

Recommended Correction: Replace order's MEP definition with the above-mentioned language.

10. The tentative order inappropriately includes the Middle Santa Ana River Bacteria TMDL.

- a. Issue: It should be abundantly clear that the Regional Board cannot accept a TMDL adopted by another jurisdiction for implementation through the MS4 permit unless the Board includes into its basin plan as an

¹⁰Op. Cit., page 35.

amendment. This argument has been raised by legal counsel for the City of Claremont.

Conclusion: The Regional Board lacks legal authority to incorporate the Middle Santa Ana River bacteria TMDL into the proposed order.

Recommended Correction: Eliminate the requirement.

11. Tentative order incorrectly asserts that its provisions do not constitute unfunded mandates under the California Constitution.

- a. Issue: Contrary to what the order asserts, it contains provisions that exceed federal requirements in several places, thereby creating potential unfunded mandates. They include: (1) requiring wet and dry weather monitoring in the receiving water; (2) requiring numeric WQBELs; (3) requiring compliance with TMDL-related implementation plans, schedules, and monitoring; (4) requiring the non-stormwater discharge prohibition to include through and from the MS4; (5) revising the receiving water limitation language to include overbroad compliance requirements; (6) requiring groundwater recharge; and (7) monitoring for non-TMDL constituents at completed development project sites.

Conclusion: The order patently proposes requirements that create unfunded mandates.

Recommended Correction: Delete all of the aforementioned requirements that exceed federal regulations.

END COMMENTS



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **WM-9**

July 23, 2012

Mr. Samuel Unger, P.E., Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr. Ivar Ridgeway

Dear Mr. Unger:

**LOS ANGELES COUNTY FLOOD CONTROL DISTRICT – COMMENTS ON THE
DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE COUNTY OF
LOS ANGELES**

The Los Angeles County Flood Control District (LACFCD) appreciates the opportunity to comment on the draft tentative Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Draft Permit) and supporting documents released on June 6, 2012. The enclosed comments are being submitted to meet the submission deadline of July 23, 2012, as required in the Notice for Public Comment. We further incorporate by reference the comments submitted by the County of Los Angeles.

The LACFCD has implemented many programs to improve stormwater and urban runoff quality in compliance with current MS4 Permit. These will continue to be implemented under the new MS4 Permit. The LACFCD is committed to improving the health of our water bodies. Our goal is to seek a permit that will allow permittees the flexibility to work together and focus their efforts on identified pollutants so that available resources are used most effectively. To that end, we not only offer the enclosed comments to the Draft Permit but also offer an alternative approach to compliance for consideration by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board).