



June 12, 2015

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
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Submitted via email: Jeanine.Townsend@Waterboards.ca.gov

Re: Environmental Groups' Response to Joint Opposition to Request for Official Notice Submitted Concurrently with Environmental Groups' Comments on Revised Draft Order SWRCB/OCC Files to A-2236(a)-(kk): In Re Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit (Order No. R4-2012-0175)

Dear Members of the Board:

On June 5, 2015, 22 MS4 Permittees submitted a Joint Opposition to the Natural Resources Defense Council, Los Angeles Waterkeeper and Heal the Bay (collectively "Environmental Groups") June 2, 2015 Request for Official Notice ("Request for Notice"). As with the previous joint oppositions submitted by Permittees in January 2015, this Joint Opposition lacks merit. For the reasons provided in our Request for Notice and the reasons provided in this letter, the State Water Resources Control Board ("State Board") should grant Environmental Groups' Request for Notice and consider the documents attached as Exhibits A-FF.¹

1. The Documents Are Properly Subject to Official Notice

Section 648.2 of Title 23 of the California Code of Regulations authorizes the State Board to take "official notice of such facts as may be judicially noticed by the courts of this state." Pursuant to Section 452(c) of the California Evidence Code, and as explained in Environmental Groups' Request for Notice, the documents attached as Exhibits A –FF are properly subject to official notice by the State Board because they are records of state or federal administrative agencies. Request for Notice, ¶ 1.

Moreover, as explained in our Request for Notice, the documents are highly relevant to one of the central issues before the State Board: whether the Receiving Water Limitations ("RWLs") alternative compliance approach proposed by the 2012 Los Angeles County MS4 Permit ("2012 MS4 Permit") is legal and proper. These documents will assist the State Board in fully evaluating

¹ Environmental Groups respectfully disagree with objecting Permittees' characterization of our Request for Notice as "a gesture of pure obduracy." Joint Opposition at 2. As explained in our Request for Notice and in this letter, Environmental Groups' are properly exercising their rights by seeking review and consideration of documents that are crucial for the State Board's evaluation of the legality and adequacy of the 2012 MS4 Permit.

the grounds, substance and impacts of the alternative compliance mechanism. Further, consideration of the documents is particularly important because the Revised Draft Order endorses the alternative compliance approach in a marked departure from the State Board's long-standing position and directs all regional boards to consider the alternative compliance approach when adopting new Phase I MS4 permits.

2. Environmental Groups' Request to Introduce the Documents Meets the Requirements of Section 2050.6 of Title 23 of the California Code of Regulations

Pursuant to Section 2050.6 of the California Code of Regulations, a petitioner's request that the State Board consider evidence "not previously provided to the regional board" must meet the following requirements:

"(1) The request to present additional evidence and all supporting arguments shall be provided at the time the petition is filed, or as soon as the evidence becomes available thereafter.

(2) The request to present additional evidence shall include a detailed statement of the nature of the evidence and of the facts to be proved. If the evidence was not presented to the regional board, the person requesting consideration of the evidence shall provide a detailed explanation of the reasons why the evidence could not previously have been submitted. If the person presenting the evidence contends that the evidence was improperly excluded, the request shall include a specific statement of the manner in which the evidence was improperly excluded."

23 C.C.R. § 2050.6(a)(1)-(2).

Environmental Groups' request that the State Board consider the documents attached as Exhibits A-FF to the Request for Notice complies with all the requirements of 23 C.C.R. § 2050.6. First, the documents were created following the adoption of the 2012 MS4 Permit and were thus not available and could not have been presented to the Los Angeles Regional Water Quality Control Board ("Regional Board") at the time of permit adoption. Environmental Groups submitted the documents to the State Board as soon as they became available in their entirety, following the Regional Board Executive Officer's issuance on April 28, 2015 of "conditional approvals" of nine Watershed Management Programs ("WMPs") developed under the 2012 MS4 Permit.

Second, and as explained in Environmental Groups' comments on the Revised Draft Order, the documents demonstrate that the 2012 MS4 Permit's alternative compliance approach will not achieve RWLs and water quality standards and thus establish that the alternative compliance approach is illegal. The Regional Board's own comments on the draft WMPs (Exhibits A, D, G, K, N, S, W, Z and CC to the Request for Notice), along with the revised WMPs (Exhibits B, E, H, I, L, O-Q, T, U, X, AA and DD to the Request for Notice) show that the revised WMPs did not address numerous non-compliance issues identified by the Regional Board, including: 1) failure to conduct a robust Reasonable Assurance Analysis ("RAA") for all constituents, 2) failure to include measurable milestones for implementing best management practices ("BMPs"),

3) failure to conduct RAAs for all waterbodies included in a watershed, 4) failure to calibrate the model used for the RAA, and 5) lack of specificity with regards to types and locations of structural projects and schedules of implementation among many others. Environmental Groups' comments on the revised WMPs (Exhibit FF to the Request for Notice) provide a detailed analysis of the representative inadequacies of the revised WMPs that were "conditionally approved" by the Regional Board's Executive Officer. The deficiencies identified by the Regional Board and the Environmental Groups demonstrate that the revised WMPs cannot achieve compliance with RWLs and water quality standards. Further, the Regional Board Executive Officer's "conditional approvals" of the revised WMPs (Exhibits C, F, J, M, R, V, Y, BB, EE to the Request for Notice) establish that, even if Permittees complied with the terms of the "conditional approvals," the WMPs will fail to achieve RWLs and water quality standards. Thus, the documents are conclusive evidence that the 2012 MS4 Permit's alternative compliance approach, as demonstrated by the WMPs, is inadequate, ineffective and fails to meet legal requirements. As a result, the 2012 MS4 Permit is illegal.

Because Environmental Groups have complied with all requirements of Section 2050.6 of Title 23 of the California Code of Regulations, the State Board should consider the documents attached as Exhibits A-FF and admit them into the administrative record. *See* 23 C.C.R. § 2050.6(a)(3).

The documents attached to Environmental Groups' Request for Notice are of crucial importance as they demonstrate the illegality and inadequacy of the 2012 MS4 Permit's alternative compliance approach. We respectfully ask the State Board to grant our Request for Notice and consider in its deliberations these important documents before making its final decision on the petitions and certainly before endorsing the 2012 MS4 Permit's alternative compliance approach as an appropriate compliance mechanism for all California Phase I MS4 Permits.

Sincerely,



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