

COMMENTS OF THE COUNTY OF LOS  
ANGELES AND THE LOS ANGELES FLOOD  
CONTROL DISTRICT ON THE DRAFT ORDER

SWRCB/OCC FILE A-1780

- Share Goals of TMDL
- Remand to Regional Board to Properly Reflect TMDL in Permit
- Remand to Reflect New Understanding of Sources of Bacteria

## SIX DEFICIENCIES IN REGIONAL BOARD'S AMENDMENT

1. Failure to limit amendment to non-stormwater
2. Failure to make receiving water quality limitations and prohibition subject to iterative process
3. Inconsistent with Malibu and Ballona Creek Bacteria TMDLs

4. Improperly implies imposition of joint responsibility in contradiction to this Board's order and the law
5. Adopted in violation of the California Administration Procedure Act
  - Regional Board counsel unlawfully acted as both advocate for staff and counsel for the Board
  - Denial of right to present evidence and cross-examine witnesses

## 6. Amendment not supported by the Findings and the Evidence

Each ground is a basis for setting aside Regional Board Amendment

# 1. Evidence at Hearing Limited Solely to Non-Storm Water

Testimony at Hearing:

Q: Are you focused on non-storm water?

A: Yes. (R.T. 282:11-14.)

Q: Are we talking only about non-storm water discharges or are we talking about something other than non-storm water discharges?

A: Okay. I'll go ahead. Discharges of non-storm water summer dry weather is redundant. (R.T. 286:4-11.)

“Dry Weather” includes storm water and non-storm water flows

- Rain events of less than 0.1 inch
- Releases from dams or reservoirs
- *Storm Water* means storm water runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13)

Permit amendment should read

Part 1.B

Discharges of *non-storm water* Summer  
Dry Weather flows from the MS4s. . . .

Part 2.5

During Summer Dry Weather there shall  
be no *non-storm water* discharges of  
bacteria from MS4s into the Santa Monica  
Bay . . . .

## 2. Failure to Make Amendment Subject to Iterative Process

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

*In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association*, State Board Order No. WQ 2001-15, p. 8.

- Variable Flows
- Unknown Sources
- “Many of the canyon creeks and storm drains in the Santa Monica Bay flow during both wet and dry weather. Dry weather flows are not directly attributable to precipitation, but rather to natural springs, over-irrigation of lawns and other activities in the watershed.”

Staff report, Dry Weather SMB Bacteria TMDL,  
p. 17

Inconsistent With EPA Memorandum,  
*Establishing Total Maximum Daily Load  
(TMDL) Wasteload Allocations (WLAs) For  
Stormwater Sources and NPDES Permit  
Requirements Based on Those WLAs*

- Recommended Iterative Approach
- BMPS rather than numeric limits

## Inconsistent With Recommendation of This Board's Panel of Experts

“It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges.” Report, p.8.

### 3. Inconsistent With Malibu and Ballona Creek Bacteria TMDLs

- Malibu Creek Bacteria TMDL – projects compliance in 2009
- Ballona Creek Bacteria TMDL – projects compliance in 2013

- 3 Dry Weather SMB TMDL monitoring points at mouth of Malibu Creek
- 1 Dry Weather SMB TMDL monitoring point at mouth of Ballona Creek

4. Amendment is inconsistent with this Board's Order in Resolution No. 2002-149 approving the SMB dry weather bacteria TMDL

“[Wasteload allocations] are only enforced *for discharger's own discharges*, and then only in the context of its National Pollutant Discharge Elimination System (NPDES) Permit, which must be consistent with the assumptions and requirements of the WLA.”  
State Board Resolution No. 202-0149, ¶ 9.

## Regional Board Ignored This Board's Order

- Permit amendment appears to imply that a discharger is responsible for other dischargers discharges.
- All Permittees within a sub watershed of the Santa Monica Bay Watershed Management Area are *jointly* responsible for compliance (Permit, p. 22, footnote 3)
- No Case Has Ever Imposed Liability On One Discharger For Discharges Above Another Discharger

## 5. The Amendment was adopted in violation of the California Administrative Procedure Act

- Regional Board's counsel unlawfully acted as both an advocate for staff and counsel for the Board. *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90-93, 98
- Petitioners were denied the right to present evidence and to cross examine witnesses
- Regional Board did not disclose the record it intended to rely on until three business days before the hearing

6. The Amendment is not Adequately Supported by the Findings and the Findings are not Supported by the Evidence

Findings that the Board failed to make:

- Identify the source of bacteria
- Whether it is technically feasible for the permittees to comply with the amendment
- Whether the amendment can be met through cost effective programs accepted by the public

- Whether the permittees can meet the terms of the amendment under the MEP standard
- To the extent compliance requires a permittee to go beyond the MEP standard, findings in accordance with Water Code § 13241
- A finding that the amendment is reasonable in light of Water Code § 13241 and that the requirements of the amendment are reasonably achievable

# CONCLUSION

Amendment should be vacated and matter remanded to the Regional Board for further proceedings.