



California Statewide Phase II MS4 Hearing

Natural Resources Defense Council, California
Coastkeeper Alliance, and Heal The Bay
January 8, 2013

Stormwater is a Leading Source of Water Pollution

- Stormwater runoff contains “sediments, non-sediment solids, nutrients, pathogens, oxygen demanding substances, petroleum hydrocarbons, heavy metals, floatables, ...PAHs, trash, and pesticides and herbicides”

Permit, at Finding 3

- “urban storm water is listed as the primary source of impairment for ten percent of all rivers, ten percent of all lakes and reservoirs, and 17 percent of all estuaries.”

Permit, at Finding 10

- Stormwater contributes to impairment in a far greater percentage of coastal and inland waters.

Stormwater Controls are Necessary and Practicable



Ballona Creek, Los Angeles (California)



(LA Times)

Legal Context

MS4 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.*”

33 U.S.C. § 1342(p)(3)(B)(iii)

The MEP Standard will “evolve and mature over time’ and must be flexible to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality.”

55 Fed.Reg. 47990, 48052

Legal Context

Receiving Water Limitations

Los Angeles MS4 Permit: The Regional Board “included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor;’” these are independently enforceable requirements that prohibit discharges that cause or contribute to a violation of Water Quality Standards.

L.A. County Mun. Storm Water Permit Litigation, No. BS 080548 at 7
(L.A. Super. Ct. March 24, 2005)

The Receiving Water Limitations language is not subject to further review by the U.S. Supreme Court in *NRDC v. County of Los Angeles*.

Low Impact Development



City of Los Angeles/Haan-Fawn Chau



City of Los Angeles

EPA finds that “In the vast majority of cases . . . Implementing well-chosen LID practices saves money for developers, property owners, and communities while protecting and restoring water quality.”

Post-Construction Requirements

Low Impact Development - the Draft Permit Must:

- Require on-site retention of, at minimum, the 85th percentile storm event with no discharge where feasible.
 - Must include use of all retention practices – including infiltration, harvesting and reuse, and evapotranspiration
 - Alternative designs (e.g., biofiltration) are not authorized where retention is feasible
- Must require minimum hydromodification controls.
- Should allow for regional projects such as groundwater recharge centers that capture stormwater for water supply, where no additional discharge to receiving waters from development or redevelopment projects will occur.

Impaired Waters



Section E.1.b. – Regional Board Executive Officer’s Authority

“...the Executive Officer may require continued implementation of the Permittee’s current BMPs and reporting requirements in lieu of implementation of the requirements of that subsection.”

Environmental Defense Center, Inc. v. U.S. E.P.A

(9th Cir. 2003) 344 F.3d 832

“[S]tormwater management programs that are designed by regulated parties must, in every instance, ***be subject to meaningful review by an appropriate regulating entity***. . . . Congress identified ***public participation rights*** as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act’s approach and philosophy.”

Stated Permit Goals

- More specific and comprehensive storm water monitoring, including monitoring for 303(d) listed pollutants.
- Incorporating emerging technologies, especially those that are being increasingly utilized by municipalities (e.g., low impact development).

Section E.1.b.

“A Renewal Traditional Small MS4 Permittee’s ***current implementation of BMPs*** is equally or ***more effective at reducing pollutant discharges*** than implementation of the requirements of a given subsection.”

Revisions to Section E.1.b.

- Finding 31 and Section E.1.b. be deleted in its entirety.
- If Section E.1.b. remains in the Permit, it should at a minimum state: *“All Permittees must implement post-construction and monitoring programs as specified in this Order.”*
- The most effective BMPs currently being implemented must be incorporated into the Revised Permit to meet the MEP standard.

Monitoring – Section E

Applicability

Page 83:

(4) Traditional Small MS4 Permittees with a population greater than 50,000 listed in Attachment A ~~that are not already conducting ASBS, TMDL or 303(d) monitoring efforts~~ shall participate in one of the following monitoring programs, subject to Regional Water Board Executive Officer approval:

- E.143.a. Regional Monitoring
- E.143.b. Receiving Water Monitoring ~~Special Studies~~

~~Traditional Small MS4 Permittees that are already conducting monitoring of discharges to ASBS, TMDL, and 303(d) impaired water bodies are not required to perform additional monitoring as specified in E.13.a and E.13.b.~~

Receiving Water Monitoring

Page 83:

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Receiving Water Monitoring

Page 91:

(i) **Task Description** – Within the first year of the effective date of the permit, the Permittee, ~~as an alternative to Receiving Water Monitoring~~, ~~may~~ shall develop and implement a special study monitoring program to assess and evaluate the effectiveness of projects or storm water program components elements designed to reduce specific water quality pollutants that are causing or contributing to beneficial use impairment. The special studies may include, but are not limited to:

- a) Assessment of effectiveness of habitat enhancement efforts and assessment of effectiveness of stream restoration projects
- b) Assessment of effectiveness of low impact development pilot projects, and assessment of storm water program components through pollutant load reduction quantification and/or discharge water quality monitoring.

Regional Monitoring

- Page 83:

Permittees are encouraged to participate in ~~may choose to comply with any of the monitoring requirements in sections E.13.i-iiiv through~~ a collaborative, regional effort to conduct the required monitoring in their jurisdictions in order to cost-effectively combine resources.

Regional Monitoring

Page 84:

Regional monitoring programs shall be reviewed and approved by the Executive Officer of the applicable Regional Board. ~~The regional monitoring programs may deviate from the specific requirements in Section E.13.a. to the extent approved by the Executive Officer, except that the regional monitoring program shall be SWAMP comparable and that all data shall be placed in the California Environmental Data Exchange Network (CEDEN).~~

Monitoring Goals

Page 85

Urban/Rural Interface. Within the first year of the effective date of the permit, identify one characteristic waterway at the top, or upstream, in of a HUC 12 level watershed planned for development in the near future that traverses an urban/rural interface, using the 2010 Census Data and urban area maps, and establish a permanent monitoring location at the identified urban/rural interface. ~~Monitoring at the urban/rural interface shall address the question: Does receiving water quality change as LID BMPs are integrated into new development?~~

Program Effectiveness

Page 94:

(e) The Program Effectiveness Assessment and Improvement Plan shall ask and answer the following Management Questions for each ~~prioritized BMPs for which~~ or group of BMPs for which answers to management questions can be based on quantitative data appropriate to the question being answered.