

Environmental Groups Joint Presentation on Receiving Water Limitations (RWLs) and Safe Harbors in the LA MS4 Permit

State Water Board Workshop
October 8, 2013

Liz Crosson, Los Angeles Waterkeeper

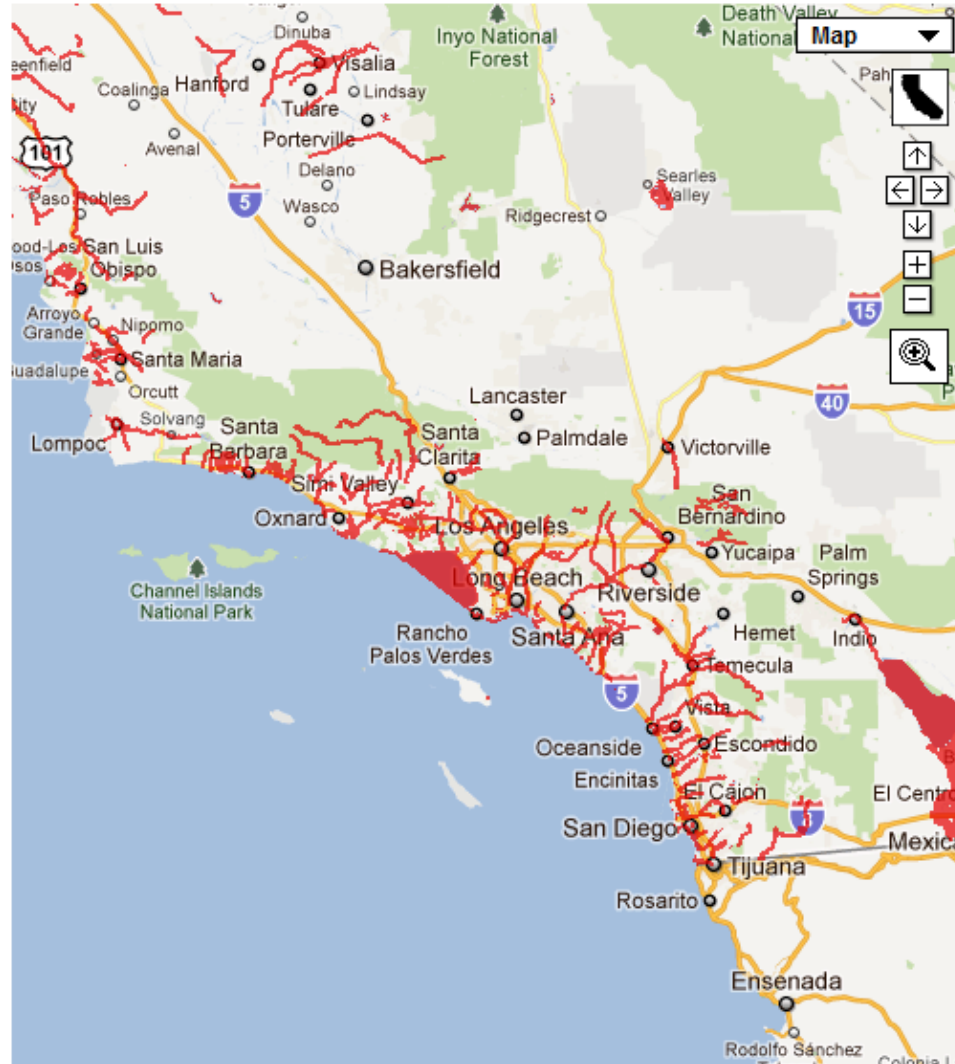
Noah Garrison, Natural Resources Defense Council

Kirsten James, Heal the Bay

Daniel Cooper, Lawyers for Clean Water



Current State of LA Waterbodies



LA County Mass Emission Stations

Discharger Data

The LA County **MS4** persistently contributes to **violations of water quality standards and TMDLs**.

The water quality limits for fecal **bacteria**, various heavy **metals**, ammonia, pH and **cyanide**, among other constituents were exceeded in **Ballona Creek**, **Malibu Creek**, the **Los Angeles River**, **Santa Clara River**, **Dominguez Channel**, and **Coyote Creek** **1105 times** from 2003-2011.



Los Angeles River near mass emissions station, 2012

Public Health Impacts - Recreation



Bacteria TMDL exceedances (Santa Monica Bay, Marina del Rey, LA Harbor)

2006*	2007**	2008	2009	2010***	2011	2012	2013+	Total
181	533	664	590	540	919	631	485	4543

* Santa Monica Bay Bacteria TMDL effective date (9-14-06)

** Marina del Rey Bacteria TMDL effective date (8-9-07)

*** LA Harbor Bacteria TMDL effective date (4-1-10)

+ Partial AB411 year (4-1-13 through 9-25-13)

2012 303(d) List - Statewide



Ocean Economy

- “California has the largest Ocean Economy in the United States, ranking number one overall for both employment and gross state product”
- Beach goers in California spend as much as \$9.5 billion annually and the non-market values associated with beach going in California may be as high as \$5.8 billion annually.

Beach Closures

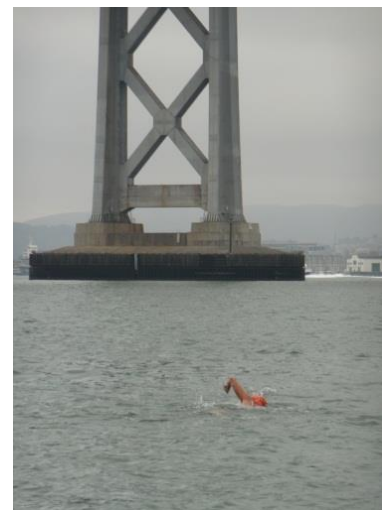
- Los Angeles County reported 1,768 total closing or advisory days in 2012 from all sources (underreported). Stormwater is the largest cause.
- An increase in water quality in Long Beach (a C grade), to the healthier standards of Huntington City Beach (a B grade) would create \$8.8 million in economic benefits over a 10-year period.

The Clean Water Act



(OC Register)

Beneficial Uses and Water Quality Standards



State must adopt water quality standards. WQSs set maximum permissible pollutant levels that are sufficiently stringent to protect public health and enhance water quality consistent with designated uses.

33 U.S.C. § § 1311(b)(1)(C), 1313

Impaired Waters and TMDLs



Ballona Creek, Los Angeles (California Coastal Commission)

TMDLs are the means for bringing impaired waterways back into compliance for pollutants such as bacteria, metals, trash, etc.

Clean Water Act NPDES permits must be consistent with the waste load allocation (“WLA”) in each TMDL.

(40 C.F.R. § 122.44(d)(1)(vii)(B))

Receiving Water Limitations – Order 99-05

2001 LA MS4 Permit:

Part 2.1 – “discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.”



2012 LA MS4 Permit

- Includes long overdue incorporation of TMDLs into the Permit.
- LID provisions increase ability to address runoff at its source.
- Watershed-based engineering solutions provide real opportunity for progress and have the potential to result in multiple benefits.
 - Encourages collaborative solutions among Permittees
 - Opportunity to address water quality problems caused by the existing built environment and to maximize benefit of regional scale projects
- Monitoring Program requires both outfall and receiving water monitoring, which helps with clarity and source identification.

The LA MS4 WMP/EWMP Approach

WMP/EWMP approach is a recipe for continued delay and is illegal.

- Proposes safe harbors where none previously existed, including during plan development.
- In concept, EWMP approach *could* be viable path toward compliance. But no evidence or factual demonstration in the Permit record to demonstrate compliance with WQSs or TMDLs will be achieved.
- Violates Anti-Backsliding Requirements
 - During plan development and where no TMDLs established.
- Violates Antidegradation Requirements
 - Where no TMDLs exist, allows lowering of water quality while WMPs are being developed and implemented.
 - Inadequate findings and support
- Violates interim and final WLAs set out in TMDLs.

Illegal Safe Harbors in the LA MS4 Permit:

Part VI.C.2.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. . . .

Part VI.C.2.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

Illegal Safe Harbors in the LA MS4 Permit:

Part VI.E.2.d.i(4)(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.

Part VI.E.2.e.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. . . .

(4) In drainage areas where Permittees are implementing an EWMP, [all] runoff up to and including the volume equivalent to the 85th percentile, 24-hour event is retained. . . .

Minimum Legal Requirements:

Eliminate safe harbor provisions :

- Delete WMP/EWMP Section VI.C.2(b)-(d) on pages 52-53
- Delete WMP/EWMP Section VI.C.3 (TMDLs) on page 53

- Delete TMDL Section VI.E.2.d.i.(4) on pages 143-144
- Delete TMDL Section VI.E.2.e.i.(4) on page 145

- Delete Illegal Compliance Schedules referenced under Part IV.A.2.a

Environmental Groups' Proposal



(Mark Boster / Los Angeles Times)

Proposal: General Principles

1. Require demonstration of compliance.
 - a. Strong Science: Board approved, peer reviewed model.
 - b. Public Input: Proposals subject to public notice and comment or hearing.
 - c. Enforceable schedule for implementation, including for interim limits/requirements.
 - d. Dischargers are not deemed in compliance during the Program development or construction phases.
2. Time for implementation provided by TSOs, CDOs, or CAOs, not the permit.
 - a. Compliance is based on implementation of the Program.
3. End-of-pipe and receiving water monitoring continue for the life of the permit and to calibrate models.
4. Ultimate Compliance determined through monitoring.

Proposal: Require Demonstration of Compliance

Where TMDLs have been adopted

Require:

- Demonstration that the proposed engineered Pollution Control Program will achieve compliance with applicable Waste Load Allocations (WLAs).
- Time for implementation of the Program could be provided by TSOs, CDOs, or CAOs, *not* by the permit.

Proposal: Require Demonstration of Compliance

Where TMDLs have not been adopted

Require:

- Demonstration that the proposed engineered Pollution Control Program will achieve compliance with applicable Water Quality Standards during the five year life of the Permit.
- Time for implementation of the Program could be provided by TSOs, CDOs, or CAOs, *not* by the permit.

