

State Water Resources Control Board  
RWL/MS4 Permit Workshop  
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Submitted on behalf of the Cities of Dana Point,  
Duarte and Huntington Park

Richard Montevideo  
Rutan & Tucker, LLP  
rmontevideo@rutan.com  
Direct Dial: 714-662-4642

# Modifications to LA Permit/CASQA RWL MS4 Approach Are Needed

- Both LA Permit and CASQA are solid, well thought through Approaches, BUT ...
- Two significant holes must be filled.
- Modifications to LA Permit proposed by DP/Duarte/HP/7 Other LA County Cities fills these holes.

# Why Fill Holes? To Avoid Endless Litigation/Wasted Resources.

- NRDC v. County of LA: 5 ½ yrs, 4 published decisions, 3 different courts, 50+ Gov. Tort Claims, more to come...
- In Re: 2012 LA MS4 Permit, SWRCB/OCC Files A-2236(a)-(kk): 37 MS4 Petitioners.
- In Re: 2013 SD Reg. MS4 Permit, SWRCB/OCC Files A-2254(a)-(p): 21 MS4 Petitioners.
- In Re: 1990 LA MS4 Permit, Order No. 91-04: “Clearly, the [BP] effluent limitations listed for other point sources are not meant to apply.” “[E]ven if such effluent limitations are intended to require compliance with water quality standards, ‘best management practices constitute legally acceptable effluent limitations.’” (pp. 6 & 16.)

# Simple Truths

- 1) Cities are unable to show “reasonable assurances” or otherwise guarantee all interim/final limits will be achieved by all deadlines.
- 2) Cities have no way of complying with WQS/TMDLs other than thru feasible BMPs.
- 3) Infeasible BMPs cannot legally/practically be required.
- 4) Even with an approved WMP/Strategic Program no City can provide “perfect” compliance, *i.e.*, future changes/adjustments will be necessary.

## HOLE No. 1: All Numeric Limits Cannot Be Achieved By All Deadlines

- LA Permit/CASQA: require “reasonable assurances” or actual compliance with all interim/final limits by all deadlines (except for areas covered by EWMP design storm BMPs).
- Simple Truth: Permittees unable to show all numerics by all deadlines are achievable, *e.g.*, LA River Bacteria TMDL /others.
- Simple Truth: Permittees only means of compliance with limits/deadlines is through feasible BMPs.

## Hole No. 2: Perfection with Approved Plans Is Not Possible – Change Orders Will Be Needed

- LA Permit, p. 53: Requires compliance with: “all requirements and dates [in approved Program].”
- CASQA, § 5(b): “If a Permittee fails to meet a requirement ... in an approved Program, the Permittee shall be subject to [applicable limit].”
- Simple Truth: Cities cannot guarantee “perfect” compliance with all requirements, *e.g.*, any approved Program will require changes, just as public work contracts require “change orders.”

# Filling Holes - DP/Duarte/HP/Others' Proposed Modifications To LA Permit.

- (1) Modification to allow Permittee to show at outset, if it cannot achieve limit(s) thru feasible BMPs, to propose Alternative BMPs.
- (2) Modification to allow for “change orders” to approved Program, *i.e.* Permittee remains in compliance so long as it timely cures deficiency or is developing and implementing EO-approved adaptive management process.

# Conclusions

- LA Permit/CASQA approaches are solid, positive approaches but must be expanded to address unique problems with urban runoff.
- No Permittee believes it: (1) can meet all numeric limits by all deadlines, or (2) achieve “perfect” compliance with approved Program.
- Cities request these holes in LA Permit/CASQA Approach be filled by modifications proposed by DP/Duarte/HP/Others.