

Construction Industry Coalition on Water Quality

January 21, 2015

Ms. Felicia Marcus, Chair
c/o: Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
1001 I Street, 24th Floor [95814]
PO Box 100
Sacramento, CA 95812-0100



Via Email: commentletters@waterboards.ca.gov

RE: Comments to A-2236 (a) through (kk)

Dear Ms. Marcus:

The Construction Industry Coalition on Water Quality (CICWQ) is submitting comments concerning SWRCB /OCC Files A-2236 (a) through (kk); Comments on Proposed Order In Re Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit (Order No. R4-2012-0175). We are submitting this comment letter on behalf of the CICWQ membership, which is described below, as well as on behalf of the Building Industry Legal Defense Foundation (BILD).

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

BILD is a non-profit mutual benefit corporation and wholly-controlled affiliate of the Building Industry Association of Southern California, Inc. (BIASC). BIASC, in turn, is a non-profit trade association representing more than 1,000 member companies. The mission of BIASC is to promote and protect the building industry to ensure its members' success in providing homes for all Southern Californians. BILD's purposes are, among others, to monitor legal and regulatory developments and to weigh in when appropriate to improve the legal climate for BIASC's members and the construction industry in Southern California.

Upon review of the Draft Order dated November 21, 2014, we can appreciate that the State Water Board is recognizing additional approaches to meeting strict compliance with receiving water limits in the Los Angeles area, including and specifically, the preparation of watershed or enhanced watershed management plans that describe and require performance of best practices to retain the 85th percentile, 24-hour storm event (also known generally as the retention approach). The retention approach was supported by Regional Board staff and Regional Board members unanimously, and endorsed repeatedly in MS4 permit renewal efforts in California by the United States Environmental Protection Agency (US EPA), starting as early as 2006. The watershed retention approach represents the highest expression of the US EPA's recommended strategy for managing runoff. The US EPA repeatedly stated if we retain stormwater, then pollutants will be reduced to the maximum extent practicable. However, while we recognize the flexibility this approach affords, we are greatly concerned the State Water Board has added unnecessary and costly monitoring and reporting practices and has greatly diminished the utility of such an approach by dis-incentivizing watershed-based approaches to achieving compliance with receiving water limits.

We want to take this opportunity to recognize our support for the Draft Order redline suggestions made by a number of cities within LA County including the cities of Signal Hill, Pico Rivera, Pomona, Duarte, and Huntington Park, among others. In addition, as members of the California Stormwater Quality Association (CASQA), we support the recommendations provided to the State Water Board by CASQA on January 19, 2015, and in earlier submittals to the State Water Board concerning this matter. Specifically, we urge the State Water Board to adopt the recommendations provided by CASQA in Section III, A & B. And, as the CASQA comment letter states, if the State Water Board rejects the recommendations contained in III, A & B, "at the very least, the proposed order should be remanded back to the Los Angeles Regional Board with specific direction to develop and identify sufficient evidence to support findings with respect to the stormwater retention approach being able to achieve substantial compliance with final requirements." We believe at CICWQ, that upon collection of evidence, including a thorough review of all Phase I MS4 permit renewal proceedings in California since 2006, the record of evidence and submittals shows that sufficient evidence does exist to make a finding that retention of the 85th percentile storm event to the extent feasible will lead to achievement of receiving water limits.

CICWQ's membership is in the forefront of water quality regulation, providing to water quality regulators practical ideas and solutions that are implementable and that have as their goal clean water outcomes. If you have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasec.org.

Respectfully submitted,



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Shanda M. Beltran, Esq.
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Attachments

Cities WMP/EWMP Alternative Approach
CASQA Comment Letter, RE: SWRCB /OCC Files A-2236 (a) through (kk)



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

January 19, 2015

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board

Subject: SWRCB /OCC Files A-2236(a) through (kk); Comments on Proposed Order *In Re*
Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit
(Order No. R4-2012-0175)

Dear Ms. Townsend:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) Proposed Order *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (Proposed Order). In its Proposed Order, the State Water Board reviews the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) November 2012 adoption of the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within Los Angeles County (hereinafter referred to as the "Los Angeles MS4 Order"). Within this context, the Proposed Order makes significant findings with respect to municipal stormwater permitting in general, and alternative compliance pathways for meeting receiving water limitations as contained in most municipal stormwater permits.

CASQA is a nonprofit corporation with approximately 2,000 members throughout California, including hundreds of local public agencies. Almost 300 CASQA members hold MS4 permits issued under state and federal law (referred to as National Pollutant Discharge Elimination System or NPDES permits and waste discharge requirements). Accordingly, we are very interested in the Proposed Order since it will guide the structure and implementation of receiving water language provisions in California permits for the foreseeable future.

In summary, CASQA generally supports the Proposed Order's findings and discussion with respect to alternative compliance pathways for complying with receiving water limitations. As a preliminary matter, however, CASQA continues to support the approach it proposed in its August 15, 2013 submittal to the State Water Board as being preferable. For CASQA, our approach is preferable because it provides for additional flexibility, and more importantly, provides permittees with additional legal protection for complying with receiving water limitations through implementation of a Strategic Compliance Program.

Recommendation

Thus, while CASQA appreciates the Proposed Order's reference with respect to the CASQA "Strategic Compliance Program" in footnote 124, we respectfully request that the Proposed Order be revised to more directly affirm CASQA's Strategic Compliance Program as a preferable approach. This can easily be accomplished by referencing the Strategic Compliance Program directly in Section B.7. of the Proposed Order. For example, where the Proposed Order references the WMP/EWMP approach, we recommend that it state:

"...the WMP/EWMP approach or the CASQA Strategic Compliance Program..."

With respect to the Proposed Order in its current form, we have several key issues of concern, and we believe that it needs to be modified to strengthen the alternative compliance pathways. First, CASQA is concerned that the Proposed Order is too narrowly drafted to address MS4 permitting for Phase I permittees only, and as a result, leaves Phase II communities with no alternative compliance path. Second, the Proposed Order's direction to other regional water boards for revising language in existing Phase I permits is too passive. Third, the Proposed Order's revisions with respect to the Los Angeles Water Board's finding of compliance with receiving water limitations through use of the 85th percentile retention standard may disincentivize use of this approach, and further, fails to recognize that at some future point some water quality standards may need to be revised as they are applied to stormwater. In addition to these key issues, CASQA provides additional comment and suggested revisions to proposed permit language revisions on other related issues such as: anti-backsliding, anti-degradation, updated reasonable assurance analysis, and numeric water quality-based effluent limitations.

I. The Proposed Order is Too Narrowly Directed to Phase I MS4s

CASQA appreciates that the Proposed Order provides some direction to other regional water boards for an approach to addressing compliance with receiving water limitations.¹ However, the Proposed Order focuses solely on Phase I MS4 permits, and does not recognize that Phase II permittees have the same practical compliance issues.

Specifically, the Proposed Order as a whole retains the inclusion and application of receiving water limitations in MS4 permits as set out by the State Water Board in Order WQ 99-05.² As explained in the Proposed Order, the State Water Board considers this to mean that receiving water limitations incorporated into permits as directed by Order WQ 99-05 are independent requirements, and that compliance with the iterative process does *not* constitute compliance with such limitations or excuse exceedances of water quality standards.³ The Proposed Order then looks to well defined, transparent, and finite alternative paths to compliance with receiving water limitations for those that are "willing to pursue significant undertakings beyond the iterative process."⁴ Further, in its specific direction to other regional water boards, the Proposed Order limits the consideration of alternative paths to the issuance of Phase I MS4 permits.⁵

¹ See, e.g., Proposed Order at pp. 48-49.

² Proposed Order at p. 14.

³ Proposed Order at pp. 14-15.

⁴ Proposed Order at p. 15.

⁵ See Proposed Order at pp. 48-49.

Nowhere within the Proposed Order does it mention or recognize Phase II communities and their need for alternative compliance pathways under the State Water Board's own MS4 permit for Phase II communities. In light of the fact that the Proposed Order continues to maintain application of the receiving water limitations language as adopted in Order WQ 99-05, and the fact that the Proposed Order specifically states that compliance with the iterative process does not excuse compliance with water quality standards, the Proposed Order must be revised to recognize an alternative compliance pathway for Phase II communities, and make some level of commitment to work with CASQA, Phase II communities, and others to develop a feasible, alternative compliance path option for such permittees, and commit to revising the Phase II General Order accordingly.

Moreover, in developing such an option for Phase II communities, the Proposed Order should recognize that what constitutes a "significant undertaking" for one community will vary as compared to that of another community. In other words, alternative compliance pathways need to be a viable option, and reachable, by all communities and should not be limited to those with more resources.

Recommendation

CASQA recommends that the conclusion portion of section B.7 of the Proposed Order be revised to recognize that the Phase II General Order will also need to be revised, and that the State Water Board commits to such an undertaking. This can be accomplished by adding the following paragraph at the end of section B.7:

"Further, we recognize that municipalities subject to the Phase II General Order as adopted by the State Water Resources Control Board also need access to a viable alternative compliance path for meeting receiving water limitations. To that end, we commit to working with CASQA, Phase II communities, and other stakeholders to develop a viable and feasible alternative compliance path option for meeting receiving water limitations. The principles identified here will guide the State Water Board in its development of such an option in the Phase II General Order."

II. The Proposed Order's Direction to Other Regional Water Boards is Too Passive

As indicated above, CASQA appreciates the direction that the Proposed Order provides to other regional water boards, and the principles articulated in the Proposed Order.⁶ However, CASQA is concerned that the direction given to other regional water boards is too passive in that it only "directs all regional water boards to consider the WMP/EWMP⁷ approach to receiving water limitations compliance when issuing Phase I MS4 permits going forward."⁸ Rather than limiting regional water board consideration of the WMP/EWMP approach to permits going forward, CASQA recommends that this direction be more explicit in that it would require all regional water boards to review existing Phase I MS4 permits, and in instances where there is not an

⁶ See, e.g., Proposed Order at pp. 48-49.

⁷ WMP refers to Watershed Management Program and EWMP refers to Enhanced Watershed Management Program, as the terms are used and defined in the Los Angeles MS4 Order. (See Los Angeles MS4 Order at pp. 47, 48.)

⁸ Proposed Order at p. 48.

appropriate WMP/EWMP or equivalent approach, direct regional water boards to revise existing permits as necessary.

Recommendation

CASQA recommends that the language in the Proposed Order be revised as follows:

“We direct all regional water boards to review existing Phase I MS4 permits, and consider if there is an appropriate ~~the~~ WMP/EWMP approach, or alternative, to receiving water limitations compliance. If there is no such approach, or an alternative, then the applicable regional water board should consider revising existing Phase I MS4 permits in a timely and efficient manner. ~~when issuing Phase I MS4 permits going forward.~~”

III. Retention Standard is an Appropriate Path for Compliance With Receiving Water Limitations

Proposed Order section B.5 addresses the issue of compliance through implementation of an EWMP, and where (1) all non-stormwater and (2) stormwater runoff up to and including the volume equivalent to the 85th percentile, 24 hour event is retained for the drainage area tributary to the applicable receiving water (hereafter referred to as the “stormwater retention approach”).⁹ As correctly noted, implementation of the stormwater retention approach as contained in the Los Angeles MS4 Order creates compliance with final water quality-based effluent limitations, other total maximum daily load (TMDL)-specific limitations and receiving water limitations, but does so in a manner that may not actually result in strict compliance with such requirements. The Proposed Order finds fault with this approach for several reasons, and proposes revisions accordingly. CASQA is concerned that the Proposed Order’s revisions here may take away incentives for using the stormwater retention approach as intended in the Los Angeles MS4 Order, and that the revisions further perpetuate a myth that compliance with all water quality standards is feasible for stormwater given sufficient time and resources.

The Proposed Order appropriately recognizes the water quality and multiple environmental benefits associated with the Los Angeles MS4 Order’s stormwater retention approach.¹⁰ However, the Proposed Order is hesitant to accept the stormwater retention approach as compliance because, in the words of the Proposed Order, the administrative record currently lacks sufficient evidence to show that the approach “will lead to compliance with receiving water limitations in all cases.”¹¹ CASQA is concerned with the Proposed Order’s conclusions with respect to the Los Angeles MS4 Order’s stormwater retention approach for several reasons.

⁹ Proposed Order at p. 39.

¹⁰ See, e.g., Proposed Order at p. 40 [“Furthermore, in addition to preventing pollutants from reaching the receiving water except as a result of high precipitation events (which also generally result in significant dilution in the receiving water), the storm water retention approach has additional benefits including recharge of groundwater, increased water supply, reduced hydromodification effects, and creation of more green space to support recreation and habitat.”].

¹¹ Proposed Order at p. 40.

A. State Water Board Should Find That Implementation of the Stormwater Retention Standard Constitutes Compliance

As indicated in the Proposed Order, the State Water Board, and thus by extension regional water quality control boards (regional water boards), have the authority to forego requiring compliance with water quality standards (i.e., receiving water limitations).¹² Use of this authority could be used to delete receiving water limitation requirements in their entirety, or could be used in certain specific situations where the State Water Board or an individual regional water board determines that implementation of specific technology is sufficient, and that in light of other factors such as economics, it is not appropriate to then further require compliance with receiving water limitations. However, the Proposed Order would have the State Water Board reject the Los Angeles Water Board's use of this authority even in instances where the stormwater retention standard is being implemented (a standard that all agree has multiple environmental benefits). Rather, the Proposed Order continues to mandate compliance with receiving water limitations in the Los Angeles MS4 Order, at some future date, even though we all recognize the multiple beneficial values associated with the stormwater retention standard.¹³

Recommendation

Considering the multiple benefits created from the stormwater retention approach, as well as the considerable costs associated with implementation of such an approach, CASQA encourages the State Water Board to uphold the Los Angeles MS4 Order as adopted, and *not* require further compliance with numeric water quality-based effluent limitations, other TMDL-specific requirements, and receiving water limitations. Otherwise, permittees subject to the Los Angeles MS4 Order may not be willing to make the significant investment in the stormwater retention approach if there is no certainty with respect to compliance with receiving water limitations and other water quality-based requirements. Accordingly, CASQA recommends that the Proposed Order uphold the Los Angeles MS4 Order and its stormwater retention standards as adopted. To that end, Proposed Order section B.5 would require significant revision.

B. Reconsideration of Water Quality Standards as Applied to Stormwater May Be Appropriate in the Future

Further, CASQA is concerned that in its effort to require compliance with receiving water limitations, the Proposed Order fails to recognize that at some point in the future re-evaluation of certain water quality standards as they apply to stormwater may be necessary. Specifically, and to the extent that the State Water Board rejects CASQA's recommendation immediately above, rather than requiring a plan for additional control measures,¹⁴ the Proposed Order should be revised to recognize that at some point in the future it may be appropriate to reconsider water quality standards (i.e., receiving water limitations), and how they apply to municipal stormwater. As indicated above, the Proposed Order still presumes that compliance with receiving water

¹² Proposed Order at p. 11.

¹³ The Proposed Order would revise the Los Angeles MS4 Order to require monitoring, and would include requirements for additional control measures for achieving compliance with final water quality-based effluent limitations, other TMDL-specific requirements, and receiving water limitations should data indicate that compliance with such requirements is not being achieved even though the stormwater retention approach has been fully implemented. (See Proposed Order at pp. 39-44.)

¹⁴ See Proposed Order at p. 44.

limitations in all cases is achievable. Considering the nature of municipal stormwater, such a presumption is problematic and fails to recognize reality for some ubiquitous pollutants such as bacteria. Further, such an approach fails to consider longstanding State Water Board precedent that clearly realizes that changes to water quality control plans may be necessary when compliance with water quality standards is not reasonably achievable.

For example, *In the Matter of the Petition of the City of Lompoc*, Order WQ 81-5 (Lompoc Order), the State Water Board noted that “[w]here compliance with the limitations cannot be achieved by *reasonable efforts*, review of the appropriateness of the water quality objective may be required.”¹⁵ In that case, the State Water Board specifically directed the regional water board to review the propriety of the water quality objective in the water quality control plan (i.e., Basin Plan) for the constituent of concern at issue. Here, implementation of the stormwater retention approach as it is included in the Los Angeles MS4 Order arguably constitutes *reasonable efforts*.¹⁶ Thus, to the extent that implementation of the stormwater retention approach does not result in compliance with receiving water limitations *in all cases*,¹⁷ it is appropriate for the Proposed Order to direct the Los Angeles Water Board to consider the propriety of the water quality objectives in the Basin Plan as they apply to stormwater that is *not* retained via the stormwater retention approach.

Recommendation

Accordingly, CASQA recommends, to the extent that the State Water Board rejects CASQA’s recommendation in section III.A above, that the Proposed Order at page 43 be revised in part as follows:

~~We are not willing to go as far as saying that compliance with the storm water retention approach alone constitutes compliance with final WQBELs and other TMDL specific limitations for all time, regardless of the actual results. Nonetheless,~~
~~w~~We anticipate that implementation of such retention projects will bring the drainage area most and, in many cases, all of the way to achievement of water quality standards, and further, we believe that implementation of such projects constitutes reasonable efforts. Where there is still a gap in required water quality improvement, we will direct the regional water board to consider the appropriateness of the water quality objectives where the gap exists, and in particular, direct the regional water board to consider the appropriateness of applying the water quality objective to stormwater that is not retained through implementation of such projects. Should the

¹⁵ Lompoc Order at p. 6, emphasis added.

¹⁶ See, e.g., Proposed Order at p. 42.

¹⁷ Reference to compliance with receiving water limitations *in all cases* is an extremely high bar, and as a practical matter is not realistic or even consistent with application of existing water quality objectives/criteria. For example, when dealing with California Toxics Rule constituents, the determination of compliance is based on whether or not more than one exceedance occurs within a three-year period. Further, it is unlikely that significant new information could ever meet the burden of providing evidence at a level that ensures with certainty that implementation will lead to compliance with receiving water limitations in all cases. Rather, the State Water Board and the regional water boards need to consider if there is substantial evidence in the record to support the finding at issue—not certainty for compliance in all cases. (*Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1268 (*AGUA*); see also *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511; *Envtl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 614.)

regional water board determine that the water quality objective is appropriately applied in such circumstances, we then direct the regional water board to require that Permittees have an approved plan in place to close that gap with additional control measures in order to be considered in compliance with the WQBEL or other TMDL-specific limitation. To the extent that the regional water board determines that an approved plan is necessary to close the gap with additional control measures, there are various mechanisms to provide assurances that the plan will be implemented to achieve the WQBEL or other TMDL-specific limitation, and in some instances, it may be appropriate for the Los Angeles Water Board to issue a time schedule order governing the implementation of further control measures.

CASQA further recommends that the Proposed Order on page 44 be revised as follows:

Where water quality monitoring under VI.C.7 shows that final water quality-based effluent limitations and final receiving water limitations are not in fact being achieved, the Los Angeles Water Board shall review the appropriateness of the final water quality-based effluent limitations and final receiving water limitations, and the water quality objectives from which the requirements are derived, and their application to storm water that is not retained through such projects. The Permittee shall remain in compliance with the final water quality based effluent limitations and final receiving water limitation while the Los Angeles Water Board conducts its review of appropriateness, and while the Los Angeles Water Board undertakes the process to amend the water quality control plan if the Los Angeles Water Board determines that such requirements are not appropriate in this situation. Should the Los Angeles Water Board determine that no amendment to the water quality control plan is necessary, the Permittee remains in compliance only if the Permittee proposes a plan for additional control measures for achievement of these final limitations and submits the plan to the Executive Officer for approval within 30 days of receiving notice from the Executive Officer that such a plan is necessary. ~~the final deadline.~~

C. At the Very Least, The Proposed Order Should Remand This Specific Issue to the Los Angeles Water Board With Direction to Develop and Identify Sufficient Evidence to Support Findings With Respect to the Stormwater Retention Approach Being Able to Achieve Substantial Compliance With Final Requirements

Should the State Water Board reject CASQA's two recommendations identified above in sections III.A and III.B, at the very least the State Water Board should remand this issue to the Los Angeles Water Board and direct it to develop and/or identify substantial evidence with respect to the efficacy of the stormwater retention approach and its ability to achieve substantial compliance with final requirements. Notably, direction on remand should reference the appropriate level of evidence needed to support the Los Angeles Water Board's stormwater retention approach, and not the level of evidence needed as implied by the Proposed Order. Specifically, the Proposed Order implies that there needs to be definitive evidence that provides certainty that implementation will lead to compliance with receiving water limits in all cases. As we stated earlier, such a standard exceeds the legal evidentiary standard, which requires the Los Angeles Water Board to support its findings based on substantial evidence in the record.¹⁸ It is

¹⁸ See *AGUA, supra*, 210 Cal.App.4th at p. 1267.

also worth noting that during the December 16 workshop, Los Angeles Water Board staff acknowledged that they had carefully considered and supported the 85% retention requirement because it resulted in a 94-95% reduction in pollutant loads.¹⁹

IV. Comments on Additional Issues

A. Anti-backsliding

In general, CASQA agrees with the Proposed Order's discussion with respect to anti-backsliding, and its findings that receiving water limitations are imposed under the discretionary provisions of Clean Water Act section 402(p)(3)(B) and therefore not subject to the anti-backsliding provisions contained in Clean Water Act section 402(o). However, as CASQA discussed at length in its October 15, 2013 comments (as well as the Los Angeles Water Board testimony during the permit hearings), CASQA further believes that anti-backsliding does not apply here because the receiving water limitations in question are not effluent limitations, standards, or conditions as meant under the U.S. EPA's regulations at Code of Federal Regulations, title 40, section 122.44(l).

Recommendation

Accordingly, CASQA recommends that the Proposed Order be revised to recognize the fact that receiving water limitations are not effluent limitations as defined under federal law and federal regulations.

B. Anti-degradation

With respect to the anti-degradation discussion contained in the Proposed Order, CASQA disagrees with the finding that baseline water quality is considered to be the best quality of water since 1968. Specifically, the state's anti-degradation policy (otherwise known as Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*) does not establish baseline water quality as of 1968. Rather, the state's policy refers to "[w]henver the existing quality of water is better than the quality established in policies *as of the date on which such policies become effective . . .*"²⁰ Although not defined within Resolution No. 68-16, the term "policies" as used in Resolution No. 68-16 is clearly meant to refer to policies other than Resolution No. 68-16 because the term "policy" or "this policy" is used when referring directly to the policy created by Resolution No. 68-16.²¹

When considered in context with water quality control plans and the establishment of water quality objectives under Porter-Cologne, a better reading of Resolution No. 68-16 is that

¹⁹ Notably, the retention of the 85th percentile runoff volume is a requirement for new development and redevelopment in the Los Angeles MS4 Order. Considering that the Los Angeles Region uses this same standard for development and redevelopment, and its use in that manner has not been challenged here, it seems to us that the State Water Board should also find it sufficient for determining compliance with receiving water limitations as included in the EWMP provisions of the LA MS4 Order.

²⁰ Resolution No. 68-16, Resolve 1, emphasis added.

²¹ See *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 777 [stating that sentences should "be viewed . . . in light of the statutory scheme" in which they are found]; see also *Cal. Drive-in Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292 [stating that the rules of statutory interpretation also apply to the interpretation of agency regulations].

“policies” refers to water quality control plans and the policies contained therein, including water quality objectives. For example, whereas clause no. 2 specifically refers to “water quality control policies” that have been or are being adopted. Then, Resolve No. 1 refers to “such policies” and when they become effective. Under the Proposed Order’s finding of baseline, all such other policies would not matter because baseline is said to be best water quality since 1968. The Proposed Order’s finding of baseline is inconsistent with Resolution No. 68-16 because it ignores reference to such policies, which would render such language superfluous.²²

Recommendation

In light of reference to water quality control policies, baseline water quality must be determined in a manner that is consistent with such policies, as they become effective. To achieve such consistency, we believe that baseline water quality is constituent and region-specific, and is dependent on the date that the water quality objective in question is adopted into the water quality control plan. Accordingly, CASQA recommends that the Proposed Order be revised to accurately describe baseline as it is set forth in Resolution No. 68-16.

Recommendation

Next, on page 28 of the Proposed Order, it recommends changes to the Los Angeles MS4 Order, and includes references to Resolution No. 68-16. The Proposed Order recommends language changes that state in part, “[], the Board must find that not only present, but also anticipated future uses of water are protected, and must ensure best practicable treatment and control of the discharges.” To ensure consistency with Resolution No. 68-16, the term “best practicable treatment and control” needs to be revised to state “best practicable treatment *or* control.” The same revision is needed to finding 2.b on page 29. Further, and as discussed immediately above, the proposed language changes that claim baseline to be 1968 needs to be revised to reflect that baseline actually varies based on policies as adopted in water quality control plans. Other conforming changes with respect to baseline water quality also need to be made.

Recommendation

On page 29 of the Proposed Order, proposed finding 2.a should be revised. Currently, the Proposed Order would include a maximum benefit finding that “some discharge of storm water is essential for maintaining instream flows that support beneficial uses.” CASQA is concerned that such a finding would require municipalities to continue to discharge stormwater, which could hinder the development and implementation of stormwater retention projects. To replace this sentence, CASQA recommends the following: “The discharge of stormwater in certain circumstances is to the maximum benefit to the people of the state because it may be necessary for flood control and public safety purposes, as well as accommodate development in the area.” Further, finding 2.a. should be revised to clarify that the Order requires compliance with receiving water limitations over time, and thus does not result in water quality less than established standards.

C. Timing for Reasonable Assurance Analysis Updates

As noted in the discussion on page 38 of the Proposed Order, revisions to the Watershed Management Programs and reasonable assurance analysis may be needed to ensure that the long

²² See, e.g., *Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 253 [courts should avoid interpretations that render language superfluous].

term WMPs/EWMPs achieve relevant water quality goals. However, updating a WMP/EWMP and reasonable assurance analysis is a significant and costly undertaking that should only be required if conditions have changed significantly such that they would alter the model results. For example, if water quality monitoring data demonstrates that progress towards meeting the water quality goals is being achieved at a rate equal to or faster than predicted by the initial analysis, the monitoring data should be sufficient evidence that sufficient progress towards meeting water quality goals is occurring. In cases where progress is not being achieved as anticipated, significant changes to the proposed control measures have been identified as part of the adaptive management process, or monitoring has revealed that initial assumptions were incorrect, refining the reasonable assurance analysis would be appropriate. Additionally, CASQA would like to suggest modifications to the proposed schedule for conducting the updates to the reasonable assurance analysis. We suggest that as part of the Report of Waste Discharge (ROWD), permittees conduct an analysis of whether conditions have sufficiently changed to warrant an update to the reasonable assurance analysis and if so, provide a schedule for conducting the updated analysis.

Recommendation

CASQA requests that the language on page 38 of the Proposed Order to add a new subsection b to part VI.C.8 be modified as follows:

b. Watershed Management Program ~~Six-Year~~ Resubmittal Process

i. In addition to adapting the Watershed Management Program or EWMP every two years as described in Part VI.C.8.a, Permittees must submit an evaluation of the watershed conditions and reasonable assurance analysis utilized to develop the Watershed Management Program or EWMP as part of the Report of Waste Discharge (ROWD). If the evaluation demonstrates a change of condition that warrants a revised reasonable assurance analysis, the ROWD will propose a schedule for developing an updated Reasonable Assurance Analysis and Watershed Management Program or EWMP that shall not exceed one year ~~updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis at an interval to be determined by the Regional Board but not to exceed every six years for review and approval by the Regional Water Board Executive Officer. If needed, the~~ updated Reasonable Assurance Analysis must incorporate both water quality data and control measure performance data gathered in prior years ~~and, as appropriate, any new numeric analyses or other methods for the reasonable assurance analysis.~~ The updated Watershed Management Program or EWMP must comply with all provisions in Part VI.C. The Regional Water Board Executive Officer will allow a 60-day public review and comment period with an option to request a hearing. The Regional Water Board Executive Officer must approve or disapprove the updated Watershed Management Program or EWMP within 120 days of submittal.

D. Numeric Water Quality-Based Effluent Limitations

While the Proposed Order provides a reasonable discussion of the rationale for including numeric water quality-based effluent limitations in the Los Angeles Permit, CASQA continues to strongly support the inclusion of best management practice-based effluent limitations in MS4 permits and appreciates the acknowledgement in the Proposed Order that numeric effluent limitations may not be appropriate for all MS4 permits.

Recommendation

In light of the recently released 2014 USEPA Memorandum that replaces the 2010 USEPA Memorandum cited in the Proposed Order, CASQA requests that modifications to the discussion on page 53 be revised in accordance with the new memorandum. In particular, the section should recognize that the recommendation is now to include “clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations.” The feasibility of including numeric effluent limitations should be a required determination for any permits that choose to include numeric effluent limitations based on water quality standards.

Additionally, the language should include a discussion to clarify that numeric effluent limitations can include limitations with a quantifiable or measurable parameter, such as on-site stormwater retention volume and do not have to be based on water quality standards.

V. Conclusion

CASQA appreciates the thoughtful and well-articulated analysis set forth in the Proposed Order, and as stated above, generally supports the Proposed Order. However, to ensure that all municipal stormwater agencies have an option of meeting receiving water limitations through an alternative compliance path, CASQA recommends that the Proposed Order be revised to include a specific commitment from the State Water Board for revising the Phase II General Order and that the Proposed Order be revised to provide more explicit direction to other regional water boards. CASQA also encourages the State Water Board to further consider the stormwater retention approach as being an appropriate path for compliance with receiving water limitations. In this regard, the State Water Board should uphold the Los Angeles MS4 Order. Further, CASQA believes it is appropriate for the State Water Board to uphold such an approach because it will further improve water quality in the state’s waters, and such an approach has other important environmental benefits.

If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Gerhardt Hubner, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee

**CITIES WMP/EWMP
ALTERNATIVE APPROACH**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

320 W. 4th Street, Suite 200, Los Angeles, California 90013

Phone (213) 576 - 6600 Fax (213) 576 - 6640

<http://www.waterboards.ca.gov/losangeles>

ORDER NO. R4-2012-0175
NPDES PERMIT NO. CAS004001

**WASTE DISCHARGE REQUIREMENTS
FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES
WITHIN THE
COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE
DISCHARGES
ORIGINATING FROM THE CITY OF LONG BEACH MS4**

The municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (hereinafter referred to separately as Permittees and jointly as the Dischargers) from the discharge points identified below are subject to waste discharge requirements as set forth in this Order.

I. FACILITY INFORMATION

Table 1. Discharger Information

Dischargers	The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (See Table 4)	
Name of Facility	Municipal Separate Storm Sewer Systems (MS4s) within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach MS4	
Facility Address	Various (see Table 2)	
The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) have classified the Greater Los Angeles County MS4 as a large municipal separate storm sewer system (MS4) pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2.		

Table 2. Facility Information

Permittee (WDID)	Contact Information	
Agoura Hills (4B190147001)	Mailing Address	30001 Ladyface Court Agoura Hills, CA 91301
	Facility Contact, Title, and E-mail	Ken Berkman, City Engineer kberkman@agoura-hills.ca.us

C. Watershed Management Programs

1. General

- a. The purpose of this Part VI.C is to allow Permittees the flexibility to develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.
- b. Participation in a Watershed Management Program is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A. (Receiving Water Limitations), Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R, by customizing the control measures in Parts III.A.4 (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures).
- c. Customized strategies, control measures, and BMPs shall be implemented on a watershed basis, where applicable, through each Permittee's storm water management program and/or collectively by all participating Permittees through a Watershed Management Program.
- d. The Watershed Management Programs ~~shall ensure that discharges from the Permittee's MS4-~~ where timely implemented by the Permittee, shall constitute the Permittee being deemed in compliance with: (i) ~~achieve~~ applicable water quality-based effluent limitations in Part VI.E and Attachments L through R, ~~pursuant to the corresponding compliance schedules,~~ (ii) ~~do not cause or contribute to exceedances of~~ (ii) the receiving water limitations in Parts V.A and VI.E and Attachments L through R, and (iii) ~~do not include the~~ non-storm water discharges requirements that are effectively prohibited pursuant to in Part III.A. The programs shall ~~also~~ ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1.
- e. Watershed Management Programs shall be developed either collaboratively or individually using the Regional Water Board's Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.
- f. Each Watershed Management Program shall be consistent with Part VI.C.5-C.8 and shall:
 - i. Prioritize water quality issues resulting from storm water and non-storm water discharges from the MS4 to receiving waters within each WMA,
 - ii. Identify and implement strategies, control measures, and BMPs to achieve the outcomes specified in Part VI.C.1.d,

- iii. Execute an integrated monitoring program and assessment program pursuant to Attachment E – MRP, Part IV to determine progress towards achieving applicable limitations and/or action levels in Attachment G, and
- iv. Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program are sought to be achieved to the maximum extent practicable. ~~in the required timeframes.~~
- v. Provide appropriate opportunity for meaningful stakeholder input, including but not limited to, a permit-wide watershed management program technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval. The composition of the TAC may include at least one Permittee representative from each Watershed Management Area for which a Watershed Management Program will be developed, and must include a minimum of one public representative from a non-governmental organization with public membership, and staff from the Regional Water Board and USEPA Region IX.
- g. Permittees may elect to develop an enhanced Watershed Management Program (EWMP). An EWMP is one that comprehensively evaluates opportunities, within the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects that, wherever feasible, retain (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event for the drainage areas tributary to the projects, while also achieving other benefits including flood control and water supply, among others. In drainage areas within the EWMP area where retention of the 85th percentile, 24-hour storm event is not feasible, the EWMP shall include a ~~Reasonable Assurance Analysis to demonstrate~~ demonstration that applicable water quality based effluent limitations and receiving water limitations ~~shall be achieved~~ will be addressed to the maximum extent practicable through implementation of other watershed control measures. An EWMP shall:
 - i. Be consistent with the provisions in Part VI.C.1.a.-f and VI.C.5-C.8;
 - ii. Incorporate applicable State agency input on priority setting and other key implementation issues;
 - iii. Provide for ~~meeting~~ measures to address water quality standards and other CWA obligations to the maximum extent practicable by utilizing provisions in the CWA and its implementing regulations, policies and guidance;
 - iv. Include multi-benefit regional projects to ensure that MS4 discharges ~~achieve~~ are being addressed to the maximum extent practicable with the

goal of achieving compliance with all final WQBELs set forth in Part VI.E., and that the discharges do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations in Part V.A., by retaining through infiltration or capture and reuse the storm water volume from the 85th percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.;

- v. In drainage areas where retention of the storm water volume from the 85th percentile, 24-hour event is not technically feasible, include other watershed control measures to ensure that MS4 discharges achieve compliance with all interim and final WQBELs set forth in Part VI.E. ~~with compliance deadlines occurring after approval of a EWMP~~ to the maximum extent practicable, and to ensure that MS4 discharges also to the maximum extent practicable, do not cause or contribute to exceedances of receiving water limitations in Part V.A.;
- vi. Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance;
- vii. Incorporate effective innovative technologies, approaches and practices, including green infrastructure;
- viii. Ensure that existing requirements to comply with technology-based effluent limitations and core requirements (e.g., including elimination of nonstorm water discharges of pollutants through the MS4, and controls to reduce the discharge of pollutants in storm water to the maximum extent practicable) are not delayed;
- ix. Ensure that a financial strategy is in place.

2. Compliance with Receiving Water Limitations Not Otherwise Addressed by a TMDL through a WMP or EWMP

- a. For receiving water limitations in Part V.A. associated with water body-pollutant combinations not addressed through a TMDL, but which a Permittee elects to address through a Watershed Management Program or EWMP as set forth in this Part VI.C., a Permittee shall comply as follows:
 - i. **For pollutants that are in the same class¹²¹ as those addressed in a TMDL for the watershed and for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

¹ Pollutants are considered in a similar class if they have similar fate and transport mechanisms, can be addressed via the same types of control measures, and within the same timeline already contemplated as part of the Watershed Management Program for the TMDL.

- (1) Permittees shall demonstrate that the Watershed Control Measures to ~~achieve~~ address the applicable TMDL provisions identified pursuant to Part VI.C.5.b.iv.(3) to the maximum extent practicable, will also adequately address contributions of the pollutant(s) within the same class from MS4 discharges to receiving waters, consistent with the assumptions and requirements of the corresponding TMDL provisions, including interim and final requirements and deadlines for their desired achievement, such that the MS4 discharges of the pollutant(s) will, to the maximum extent practicable, not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (2) Permittees shall include the water body-pollutant combination(s) in the ~~Reasonable Assurance~~ Demonstration Analysis in Part VI.C.5.b.iv.(5).
- (3) Permittees shall identify milestones and dates for their achievement consistent with those in the corresponding TMDL.

ii. For pollutants that are not in the same class as those addressed in a TMDL for the watershed, but for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:

- (1) Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (3) Permittees shall include the water body-pollutant in the ~~Reasonable Assurance~~ Demonstration Analysis in Part VI.C.5.b.iv.(5).
- (4) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.

- (5) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
- (a) For an EWMP, in drainage areas where retention of (i) all nonstorm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
 - (b) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible and where the Regional Water Board determines that MS4 discharges cause or contribute to the water quality impairment, participating Permittees may initiate development of a stakeholder-proposed TMDL upon approval of the Watershed Management Program or EWMP. For MS4 discharges from these drainage areas to the receiving waters, any extension of this compliance mechanism beyond the term of this Order shall be consistent with the implementation schedule in a TMDL for the waterbody pollutant combination(s) adopted by the Regional Water Board.

iii. For pollutants for which there are exceedances of receiving water limitations in Part V.A., but for which the water body is not identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:

- (1) Upon an exceedance of a receiving water limitation, based on data collected pursuant to the MRP and approved IMPs and CIMPs, Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) If MS4 discharges are identified as a source of the pollutant(s) that has caused or contributed to, or has the potential to cause or contribute to, the exceedance(s) of receiving water limitations in Part V.A., Permittees shall address contributions of the pollutant(s) from MS4 discharges through modifications to the WMP or EWMP pursuant to Part VI.C.8.a.ii.
 - (a) In a modified WMP or EWMP, Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.

- (b) Permittees shall modify the ~~Reasonable~~ Demonstration Assurance-Analysis pursuant to Part VI.C.5.b.iv.(5) to address the pollutant(s).
 - (c) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.
 - (d) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
 - (i) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
 - (ii) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible, for newly identified exceedances of receiving water limitations, a Permittee may request that the Regional Water Board approve a modification to its WMP or EWMP to include these additional water body-pollutant combinations.
- 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.
- c. If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement.

- 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, if all the following requirements are met:
 - i. Provides timely notice of its intent to develop a WMP or EWMP,
 - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
 - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
 - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

3. Compliance with Receiving Water Limitations Addressed by a TMDL through a WMP or EWMP

- a. 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 provisions pertaining to applicable ~~interim~~-water quality based effluent limitations and ~~interim~~-receiving water limitations in Part VI.E. and Attachments L-R for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.
- b. 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., if all the following requirements are met:
 - i. Provides timely notice of its intent to develop a WMP or EWMP,
 - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
 - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
 - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

- c. Subdivision b. does not apply to receiving water limitations corresponding to final compliance deadlines pursuant to TMDL provisions in Part VI.E. that have passed or will occur prior to approval of a WMP or EWMP.

4. Process

- a. Timelines for Implementation
 - i. Implementation of the following requirements shall occur per the schedule specified in Table 9 below:

Table 9. Watershed Management Program Implementation Requirements

Part	Provision	Due Date
VI.C.4.b	Notify Regional Water Board of intent to develop Watershed Management Program or enhanced WMP and request submittal date for draft program plan	6 months after Order effective date
VI.C.4.c	For Permittee(s) that elect not to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	1 year after Order effective date
VI.C.4.c	For Permittee(s) that elect to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	18 months after Order effective date
VI.C.4.c.iv	For Permittees that elect to collaborate on an enhanced WMP that meets the requirements of Part VI.C.4.c.iv, submit draft plan to Regional Water Board	18 months after Order effective date, provide final work plan for development of enhanced WMP
		30 months after Order effective date, submit draft plan
VI.C.4.c	Comments provided to Permittees by Regional Water Board	4 months after submittal of draft plan
VI.C.4.c	Submit final plan to Regional Water Board 3 months after receipt of Regional Water Board comments on draft plan	

Part	Provision	Due Date
VI.C.4.c	Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board	3 months after submittal of final plan
VI.C.6	Begin implementation of Watershed Management Program or EWMP	Upon approval of final plan
VI.C.8	Comprehensive evaluation of Watershed Management Program or EWMP and submittal of modifications to plan	Every two years from date of approval

- b. Permittees that elect to develop a Watershed Management Program or EWMP must notify the Regional Water Board no later than six months after the effective date of this Order.
- i. Such notification shall specify if the Permittee(s) are requesting a 12-month or 18-month submittal date for the draft Watershed Management Program, per Part VI.C.4.c.i – ii, or if the Permittees are requesting a 18/30-month submittal date for the draft EWMP per Part VI.C.4.c.iv.
 - ii. As part of their notice of intent to develop a WMP or EWMP, Permittees shall identify all applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and the applicable attachment(s) with compliance deadlines occurring prior to approval of a WMP or EWMP. Permittees shall identify watershed control measures, where possible from existing TMDL implementation plans, that will be implemented by participating Permittees concurrently with the development of a Watershed Management Program or EWMP to ensure that MS4 discharges achieve compliance with applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations set forth in Part VI.E. and the applicable attachment(s) by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.
 - iii. As part of their notification, Permittees electing to develop an EWMP shall submit all of the following in addition to the requirements of Part VI.C.4.b.i.-ii.:
 - (1) Plan concept and geographical scope,
 - (2) Cost estimate for plan development,
 - (3) Executed MOU/agreement among participating Permittees to fund plan development, or final draft MOU among participating Permittees

along with a signed letter of intent from each participating City Manager or head of agency. If a final draft MOU is submitted, the MOU shall be fully executed by all participating Permittees within 12 months of the effective date of this Order.

- (4) Interim milestones for plan development and deadlines for their achievement,
 - (5) Identification of, and commitment to fully implement, one structural BMP or a suite of BMPs at a scale that provides meaningful water quality improvement within each watershed covered by the plan within 30 months of the effective date of this Order in addition to watershed control measures to be implemented pursuant to b.ii. above. The structural BMP or suite of BMPs shall be subject to approval by the Regional Water Board Executive Officer, and
 - (6) Demonstration that the requirements in Parts VI.C.4.c.iv.(1) and (2) have been met.
- c. Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board as follows:
- i. For Permittees that elect to collaborate on the development of a Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area covered by the WMP:
 - (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
 - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.i(1) and (2) have been met in greater than 50% of the watershed area.
 - ii. For a Permittee that elects to develop an individual Watershed Management Program, the Permittee shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met:

- (1) Demonstrate that there is a LID ordinance in place for the Permittee's jurisdiction and/or commence development of a Low Impact Development (LID) ordinance for the Permittee's jurisdiction meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there is a green streets policy in place for the Permittee's jurisdiction and/or commence development of a policy that specifies the use of green street strategies for transportation corridors within the Permittee's jurisdiction within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
 - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.ii.(1) and (2) have been met.
- iii. For Permittees that elect not to implement the conditions under Part VI.C.4.c.i. or Part VI.C.4.c.ii., Permittees shall submit the draft Watershed Management Program no later than 12 months after the effective date of this Order.
- iv. For Permittees that elect to collaborate on the development of an EWMP, Permittees shall submit the work plan for development of the EWMP no later than 18 months after the effective date of this Order, and shall submit the draft program no later than 30 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area in the watershed:
- (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
 - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
 - (3) Demonstrate in the notification of the intent to develop an EWMP that Parts VI.C.4.c.iv.(1) and (2) have been met in greater than 50% of the watershed area.

- d. Until the Watershed Management Program or EWMP is approved by the Regional Water Board or by the Executive Officer on behalf of the Regional Water Board, Permittees that elect to develop a Watershed Management Program or EWMP shall:
 - i. Continue to implement watershed control measures in their existing storm water management programs, including actions within each of the six categories of minimum control measures consistent with 40 CFR section 122.26(d)(2)(iv),
 - ii. Continue to implement watershed control measures to eliminate non-storm water discharges through the MS4 that are a source of pollutants to receiving waters consistent with CWA section 402(p)(3)(B)(ii), and
 - iii. Implement watershed control measures, where possible from existing TMDL implementation plans, to ensure that MS4 discharges achieve compliance ~~with~~ to the maximum extent practicable, interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and set forth in Attachments L through R. ~~by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.~~
- e. Permittees that do not elect to develop a Watershed Management Program or EWMP, or that do not have an approved WMP or EWMP within 28 or 40 months, respectively, of the effective date of this Order, shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).
- f. Permittees subject to the Middle Santa Ana River Watershed Bacteria Indicator TMDL shall submit a Comprehensive Bacteria Reduction Plan (CBRP) for dry weather to the Regional Water Board Executive Officer no later than nine months after the effective date of this Order. The CBRP shall describe, in detail, the specific actions that have been taken or will be taken to achieve compliance with the dry weather water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Watershed Bacteria Indicator TMDL by December 31, 2015. The CBRP shall also establish a schedule for developing a CBRP to comply with the water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Bacteria TMDL during wet weather by December 31, 2025. The CBRP may be developed in lieu of the Watershed Management Program for MS4 discharges of bacteria within the Middle Santa Ana River Watershed.

5. Program Development

- a. Identification of Water Quality Priorities

Permittees shall identify the water quality priorities within each WMA that will be addressed by the Watershed Management Program. At a minimum, these priorities shall include achieving to the maximum extent practicable, applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs, as set forth in Part VI.E and Attachments L through R of this Order.

- i. **Water Quality Characterization.** Each plan shall include an evaluation of existing water quality conditions, including characterization of storm water and non-storm water discharges from the MS4 and receiving water quality, to support identification and prioritization/sequencing of management actions.
- ii. **Water Body-Pollutant Classification.** On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations shall be classified into one of the following three categories:
 - (1) **Category 1 (Highest Priority):** Water body-pollutant combinations for which water quality-based effluent limitations and/or receiving water limitations are established in Part VI.E and Attachments L through R of this Order.
 - (2) **Category 2 (High Priority):** Pollutants for which data indicate water quality impairment in the receiving water according to the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) and for which MS4 discharges may be causing or contributing to the impairment.
 - (3) **Category 3 (Medium Priority):** Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance.
- iii. **Source Assessment.** Utilizing existing information, potential sources within the watershed for the water body-pollutant combinations in Categories 1 – 3 shall be identified.
 - (1) Permittees shall identify known and suspected storm water and non-storm water pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the water quality priorities. The identification of known and suspected sources of the highest water quality priorities shall consider the following:
 - (a) Review of available data, including but not limited to:

- (i) Findings from the Permittees' Illicit Connections and Illicit Discharge Elimination Programs;
 - (ii) Findings from the Permittees' Industrial/Commercial Facilities Programs;
 - (iii) Findings from the Permittees' Development Construction Programs;
 - (iv) Findings from the Permittees' Public Agency Activities Programs;
 - (v) TMDL source investigations;
 - (vi) Watershed model results;
 - (vii) Findings from the Permittees' monitoring programs, including but not limited to TMDL compliance monitoring and receiving water monitoring; and
 - (viii) Any other pertinent data, information, or studies related to pollutant sources and conditions that contribute to the highest water quality priorities.
 - (b) Locations of the Permittees' MS4s, including, at a minimum, all MS4 major outfalls and major structural controls for storm water and non-storm water that discharge to receiving waters.
 - (c) Other known and suspected sources of pollutants in non-storm water or storm water discharges from the MS4 to receiving waters within the WMA.
- iv. Prioritization. Based on the findings of the source assessment, the issues within each watershed shall be prioritized and sequenced. Watershed priorities shall include at a minimum:
- (1) TMDLs
 - (a) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term, or TMDL compliance deadlines that have already passed and limitations have not been achieved.
 - (b) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines between September 6, 2012 and October 25, 2017.
 - (2) Other Receiving Water Considerations

- (a) Controlling pollutants for which data indicate impairment or exceedances of receiving water limitations in the receiving water and the findings from the source assessment implicates discharges from the MS4 shall be considered the second highest priority.
- b. Selection of Watershed Control Measures
- i. Permittees shall identify strategies, control measures, and BMPs to implement through their individual storm water management programs, and collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities.
 - ii. The objectives of the Watershed Control Measures shall include:
 - (1) Prevent or eliminate non-storm water discharges to the MS4 to the maximum extent practicable that are a source of pollutants from the MS4 to receiving waters.
 - (2) Implement pollutant controls necessary to achieve to the maximum extent practicable, all applicable interim and final water quality-based effluent limitations and/or receiving water limitations pursuant to corresponding compliance schedules.
 - (3) Ensure that discharges from the MS4 do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations.
 - iii. Watershed Control Measures may include:
 - (1) Structural and/or non-structural controls and operation and maintenance procedures that are designed to achieve to the maximum extent practicable, applicable water quality-based effluent limitations, receiving water limitations in Part VI.E and/or Attachments L through R;
 - (2) Retrofitting areas of existing development known or suspected to contribute to the highest water quality priorities with regional or subregional controls or management measures; and
 - (3) Stream and/or habitat rehabilitation or restoration projects where stream and/or habitat rehabilitation or restoration are necessary for, or will contribute to demonstrable improvements in the physical, chemical, and biological receiving water conditions and restoration and/or protection of water quality standards in receiving waters.
 - iv. The following provisions of this Order shall be incorporated as part of the Watershed Management Program:

- (1) Minimum Control Measures.
 - (a) Permittees shall assess the minimum control measures (MCMs) as defined in Part VI.D.4 to Part VI.D.10 of this Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the following minimum control measures, Permittees shall identify potential modifications that will address watershed priorities:
 - (i) Development Construction Program
 - (ii) Industrial/Commercial Facilities Program
 - (iii) Illicit Connection and Illicit Discharges Detection and Elimination Program
 - (iv) Public Agency Activities Program
 - (v) Public Information and Participation Program
 - (b) At a minimum, the Watershed Management Program shall include management programs consistent with 40 CFR section 122.26(d)(2)(iv)(A)-(D).
 - (c) If the Permittee(s) elects to eliminate a control measure identified in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 because that specific control measure is not applicable to the Permittee(s), the Permittee(s) shall provide a justification for its elimination. The Planning and Land Development Program is not eligible for elimination.
 - (d) Such customized actions, once approved as part of the Watershed Management Program, shall replace in part or in whole the requirements in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 for participating Permittees.
- (2) Non-Storm Water Discharge Measures. Where Permittees identify non-storm water discharges from the MS4 as a source of pollutants that cause or contribute to exceedance of receiving water limitations, the Watershed Control Measures shall include strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants, to the maximum extent practicable, consistent with Parts III.A and VI.D.10. These may include measures to prohibit the non-storm water discharge to the MS4, additional BMPs to reduce pollutants in the non-storm water discharge or conveyed by the non-storm water discharge, diversion to a sanitary sewer for treatment, or strategies to require the non-

storm water discharge to be separately regulated under a general NPDES permit.

- (3) TMDL Control Measures. Permittees shall compile control measures that have been identified in TMDLs and corresponding implementation plans. Permittees shall identify those control measures to be modified, if any, to most effectively address TMDL requirements within the watershed. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., USEPA established TMDLs), the Permittees shall evaluate and identify control measures to ~~achieve~~ attempt to achieve, to the maximum extent practicable, water quality-based effluent limitations and/or receiving water limitations established in this Order pursuant to these TMDLs.
 - (a) TMDL control measures shall include where necessary control measures to address both storm water and non-storm water discharges from the MS4.
 - (b) TMDL control measures may include baseline or customized activities covered under the general MCM categories in Part VI.D as well as BMPs and other control measures covered under the non-storm water discharge provisions of Part III.A of this Order.
 - (c) The WMP shall include, at a minimum, those actions that will be implemented during the permit term to ~~achieve~~ attempt to achieve, to the maximum extent practicable, interim and/or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines within the permit term.
- (4) Each plan shall include the following components:
 - (a) Identification of specific structural controls and non-structural best management practices, including operational source control and pollution prevention, and any other actions or programs to attempt to achieve, to the maximum extent practicable, all water quality-based effluent limitations and receiving water limitations contained in this Part VI.E and Attachments L through R to which the Permittee(s) is subject;
 - (b) For each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation;
 - (c) For any pollution prevention measures, the nature, scope, and timing of implementation;
 - (d) For each structural control and non-structural best management practice, interim milestones and dates for achievement to ensure

that TMDL compliance deadlines will be met, to the maximum extent practicable; and

- (e) The plan shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures.
- (5) Permittees shall conduct a ~~Reasonable Assurance~~ Demonstration Analysis for each water body-pollutant combination addressed by the Watershed Management Program. A ~~Reasonable Assurance~~ Demonstration Analysis (DA) (RAA) shall be quantitative and performed using a peer-reviewed model in the public domain. Models to be considered for the ~~RAA~~ DA, without exclusion, are the Watershed Management Modeling System (WMMS), Hydrologic Simulation Program-FORTRAN (HSPF), and the Structural BMP Prioritization and Analysis Tool (SBPAT). The ~~RAA~~ DA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis. Data on performance of watershed control measures needed as model input shall be drawn only from peer-reviewed sources. These data shall be statistically analyzed to determine the best estimate of performance and the confidence limits on that estimate for the pollutants to be evaluated. The objective of the ~~RAA~~ DA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve to the maximum extent practicable, applicable water quality based effluent limitations and do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations.
- (a) Permittees shall demonstrate using the ~~RAA~~ DA that the activities and control measures identified in the Watershed Control Measures will achieve to the maximum extent practicable, applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R with compliance deadlines during the permit term.
 - (b) Where the TMDL Provisions in Part VI.E and Attachments L through R do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving to the maximum extent practicable, interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.

(c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the ~~RAA-DA~~ that the activities and control measures identified in the Watershed Control Measures will achieve applicable receiving water limitations as soon as possible to the maximum extent practicable.

(6) Permittees shall provide documentation that they have the necessary legal authority to implement the Watershed Control Measures identified in the plan, or that other legal authority exists to compel implementation of the Watershed Control Measures.

c. Compliance Schedules

Permittees shall incorporate compliance schedules in Attachments L through R into the plan and, where necessary develop interim milestones and dates for their achievement. Compliance schedules and interim milestones and dates for their achievement shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality-based effluent limitations and/or receiving water limitations, to the maximum extent practicable.

- i. Schedules must be adequate for measuring progress on a watershed scale once every two years.
- ii. Schedules must be developed for both the strategies, control measures and BMPs implemented by each Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale.
- iii. Schedules shall incorporate the following:
 - (1) Compliance deadlines occurring within the permit term for achieving all applicable interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R of this Order to the maximum extent practicable,
 - (2) Interim milestones and dates for their achievement to the maximum extent practicable, within the permit term, for any applicable final water quality-based effluent limitation and/or receiving water limitation in Part VI.E and Attachments L through R, where deadlines within the permit term are not otherwise specified.
 - (3) For watershed priorities related to addressing exceedances of receiving water limitations in Part V.A and not otherwise addressed by Part VI.E:
 - (a) Milestones based on measureable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,

- (a) A schedule with dates for achieving the milestones, and
- (b) A final date for achieving the receiving water limitations as soon as possible, [to the maximum extent practicable](#).
- (c) The milestones and implementation schedule in (a)-(c) fulfill the requirements in Part V.A.3.a to prepare an Integrated Monitoring Compliance Report.

6. Watershed Management Program Implementation

Each Permittee shall begin implementing the Watershed Management Program or EWMP immediately upon approval of the plan by the Regional Water Board or the Executive Officer on behalf of the Regional Water Board.

- a. Permittees may request an extension of deadlines for achievement of **interim** milestones established pursuant to Part VI.C.4.c.iii. ~~(3)~~ **only**. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions shall be subject to approval by the Regional Water Board Executive Officer.

7. Integrated Watershed Monitoring and Assessment

Permittees in each WMA shall develop an integrated monitoring program as set forth in Part IV of the MRP (Attachment E) or implement a customized monitoring program with the primary objective of allowing for the customization of the outfall monitoring program (Parts VIII and IX) in conjunction with an approved Watershed Management Program or EWMP, as defined below. Each monitoring program shall assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the water quality priorities for each WMA. The customized monitoring program shall be submitted as part of the Watershed Management Program, or where Permittees elect to develop an EWMP, shall be submitted within 18 months of the effective date of this Order. If pursuing a customized monitoring program, the Permittee(s) shall provide sufficient justification for each element of the program that differs from the monitoring program requirements as set forth in Attachment E. Monitoring programs shall be subject to approval by the Executive Officer following a public comment period. The customized monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:

- Receiving Water Monitoring
- Storm Water Outfall Monitoring
- Non-Storm Water Outfall Monitoring
- New Development/Re-Development Effectiveness Tracking

- Regional Studies

8. Adaptive Management Process

a. Watershed Management Program Adaptive Management Process

- i. Permittees in each WMA shall implement an adaptive management process, every two years from the date of program approval, adapting the Watershed Management Program or EWMP to become more effective, based on, but not limited to a consideration of the following:
 - (1) Progress toward achieving interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R, according to established compliance schedules;
 - (2) Progress toward achieving improved water quality in MS4 discharges and achieving receiving water limitations through implementation of the watershed control measures based on an evaluation of outfall-based monitoring data and receiving water monitoring data;
 - (3) Achievement of interim milestones;
 - (4) Re-evaluation of the water quality priorities identified for the WMA based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
 - (5) Availability of new information and data from sources other than the Permittees' monitoring program(s) within the WMA that informs the effectiveness of the actions implemented by the Permittees;
 - (6) Regional Water Board recommendations; and
 - (7) Recommendations for modifications to the Watershed Management Program solicited through a public participation process.
- ii. Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, ~~with the exception of those compliance deadlines established in a TMDL~~, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.

- (1) The adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.
- iii. Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.

E. Total Maximum Daily Load Provisions

1. The provisions of this Part VI.E. implement and are consistent with the assumptions and requirements of all waste load allocations (WLAs) established in TMDLs for which some or all of the Permittees in this Order are responsible.
 - a. Part VI.E of this Order includes provisions that are designed to assure that Permittees achieve WLAs and meet other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges to the maximum extent practicable. TMDL provisions are grouped by WMA (WMA) in Attachments L through R.
 - b. The Permittees subject to each TMDL are identified in Attachment K.
 - c. The Permittees shall comply to the maximum extent practicable, with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).
 - d. A Permittee may comply with water quality-based effluent limitations and receiving water limitations in Attachments L through R using any lawful means.

2. Compliance Determination

a. General

- i. A Permittee shall demonstrate ~~compliance~~ the effectiveness of the WMP or EWMP at compliance monitoring points established in each TMDL or, if not specified in the TMDL, at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E, Part VI.C.5 (Integrated Watershed Monitoring and Assessment).
- ii. Compliance to the maximum extent practicable, with water quality-based effluent limitations shall be determined as described in Parts VI.E.2.d and VI.E.2.e, or for trash water quality-based effluent limitations as described in Part VI.E.5.b, or as otherwise set forth in TMDL specific provisions in Attachments L through R.
- iii. Pursuant to Part VI.C, a Permittee may, individually or as part of a watershed-based group, develop and submit for approval by the Regional Water Board Executive Officer a Watershed Management Program that addresses all water quality-based effluent limitations and receiving water limitations to the maximum extent practicable, to which the Permittee is subject pursuant to established TMDLs.

b. Commingled Discharges

- i. A number of the TMDLs establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL.
- ii. In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.
- iii. Where Permittees have commingled discharges to the receiving water, compliance at the outfall to the receiving water or in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart v. below.
- iv. For purposes of compliance determination, each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation(s) at the outfall or receiving water limitation(s) in the target receiving water.
- v. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation or receiving water limitation in any of the following ways:
 - (1) Demonstrate that there is no discharge from the Permittee's MS4 into the applicable receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation; or
 - (2) Demonstrate that the discharge from the Permittee's MS4 is controlled to a level that does not exceed the applicable water quality-based effluent limitation; or
 - (3) For exceedances of bacteria receiving water limitations or water quality-based effluent limitations, demonstrate through a source investigation pursuant to protocols established under California Water Code section 13178 or for exceedances of other receiving water limitations or water quality-based effluent limitations, demonstrate using other accepted source identification protocols, that pollutant sources within the jurisdiction of the Permittee or the Permittee's MS4 have not caused or contributed to the exceedance of the Receiving Water Limitation(s).

c. Receiving Water Limitations Addressed by a TMDL

- i. For receiving water limitations in Part V.A. associated with water body-pollutant combinations addressed in a TMDL, Permittees shall [achieve](#) [be](#)

considered in compliance with the receiving water limitations in Part V.A. if they are in compliance with the WMP/EWMP process as outlined in this ~~Part VI.E. and Attachments L through R of this~~ Order.

- ii. A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL.
- iii. As an alternative means of complying with the TMDL requirements, other than through the WMP/EWMP process, As long as a Permittee will be considered is in compliance with the applicable TMDL requirements if it is in compliance with a time schedule order (TSO) issued by the Regional Water Board pursuant to California Water Code sections 13300 and 13385(j)(3), ~~it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO.~~

d. ~~Interim~~ Water Quality-Based Effluent Limitations and Receiving Water Limitations

- i. A Permittee shall be considered in compliance with an applicable ~~interim~~ water quality-based effluent limitation and ~~interim~~-receiving water limitation for a pollutant associated with a specific TMDL if any of the following is demonstrated:
 - (1) There are no violations of the interim water quality-based effluent limitation for the pollutant associated with a specific TMDL at the Permittee's applicable MS4 outfall(s),² including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
 - (2) There are no exceedances of the applicable receiving water limitation for the pollutant associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
 - (3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant associated with a specific TMDL; or
 - (4) The Permittee has submitted and is fully implementing an approved Watershed Management Program or EWMP pursuant to Part VI.C.
 - (a) To be considered fully implementing an approved Watershed Management Program or EWMP, a Permittee must be

² An outfall may include a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary.

implementing all actions consistent with the approved program and applicable compliance schedules, including structural BMPs.

- (b) Structural storm water BMPs or systems of BMPs should be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm, where feasible and necessary to achieve applicable WQBELs and receiving water limitations, and maintenance records must be up-to-date and available for inspection by the Regional Water Board.
- (c) A Permittee that does not implement the Watershed Management Program in accordance with the milestones and compliance schedules shall demonstrate compliance with its interim water quality-based effluent limitations and/or receiving water limitations pursuant to Part VI.E.2.d.i.(1)-(3), above.
- (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. This subdivision (d) shall not apply to ~~interim~~ trash WQBELs.
 - (1) Provides timely notice of its intent to develop a WMP or EWMP,
 - (2) Meets all interim and final deadlines for development of a WMP or EWMP,
 - (3) For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants to the maximum extent practicable from MS4 discharges that cause or contribute to the impairment(s) addressed by the TMDL(s), and
 - (4) Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

~~**e. Final Water Quality-based Effluent Limitations and/or Receiving Water Limitations**~~

- ~~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 any of the following is demonstrated:~~

- ~~(1) There are no violations of the final water quality-based effluent limitation for the specific pollutant at the Permittee's applicable MS4 outfall(s)³;~~
- ~~(2) There are no exceedances of applicable receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);~~
- ~~(3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL; or~~

(5) In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event is retained for the drainage area tributary to the applicable receiving water. This provision (4) shall not apply to ~~final~~ trash WQBELs.

3. USEPA Established TMDLs

TMDLs established by the USEPA, to which Permittees are subject, do not contain an implementation plan adopted pursuant to California Water Code section 13242. However, USEPA has included implementation recommendations as part of these TMDLs. In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will are to be designed to be effective in achieving compliance with USEPA established numeric WLAs to the maximum extent practicable. ~~The Regional Water Board may, at its discretion, revisit this decision within the term of this Order or in a future permit, as more information is developed to support the inclusion of numeric water quality based effluent limitations.~~

- a. Each Permittee shall propose BMPs to achieve the WLAs contained in the applicable USEPA established TMDL(s), and a schedule for implementing the BMPs that is as short as possible, in a Watershed Management Program or EWMP.
- b. Each Permittee may either individually submit a Watershed Management Program, or may jointly submit a WMP or EWMP with other Permittees subject to the WLAs contained in the USEPA established TMDL.
- c. At a minimum, each Permittee shall include the following information in its Watershed Management Program or EWMP, relevant to each applicable USEPA established TMDL:

³ ~~Ibid.~~

- i. Available data demonstrating the current quality of the Permittee's MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
- ii. A detailed description of BMPs that have been implemented, and/or are currently being implemented by the Permittee to achieve the WLA(s), if any;
- iii. A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable WLA(s);
- iv. A demonstration that the time schedule requested is as short as possible, taking into account the time since USEPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WLA(s) to the maximum extent practicable.;

~~(1) For the Malibu Creek Nutrient TMDL established by USEPA in 2003, in no case shall the time schedule to achieve the final numeric WLAs exceed five years from the effective date of this Order; and~~

- v. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and numeric milestones and the date(s) for their achievement.
- d. Each Permittee subject to a WLA in a TMDL established by USEPA shall submit a draft of a Watershed Management Program or EWMP to the Regional Water Board Executive Officer for approval per the schedule Part VI.C.4. e.
 - e. If a Permittee does not submit a Watershed Management Program, or the plan is determined to be inadequate by the Regional Water Board Executive Officer and the Permittee does not make the necessary revisions within 90 days of written notification that plan is inadequate, the Permittee shall be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the MRP (Attachment E) for this Order.

4. State Adopted TMDLs where Final Compliance Deadlines have Passed

- a. Permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule, but Permittees following the WMP/EWMP process in accordance with Part VI.C shall be considered in compliance with all such WQBELs, receiving water limitations and WLAs.
- b. ~~Where~~ As an alternative to compliance through the WMP/EWMP process, where a Permittee is seeking to comply with such WQBELs, receiving water limitations and WLAs, other than through the WMP/EWMP process, and

believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, ~~a~~the Permittee may within 45 days of Order adoption request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.

- c. Permittees may either individually request a TSO, or may jointly request a TSO with all Permittees subject to the water quality-based effluent limitations and/or receiving water limitations, to implement the WLAs in the state-adopted TMDL.
- d. At a minimum, a request for a time schedule order shall include the following:
 - i. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
 - ii. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
 - iii. Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations;
 - iv. A detailed time schedule of specific actions the Permittee will take in order to attempt to achieve the water quality-based effluent limitations and/or receiving water limitations to the maximum extent practicable;
 - v. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation goals(s); and
 - vi. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements for BMP implementation and the date(s) for their ~~achievement~~performance. The interim requirements shall include both of the following:
 - (1) Effluent limitation(s) goals for the pollutant(s) of concern; and
 - (2) Actions and milestones ~~leading~~ that are to be designed to attempt to meet to compliance with the effluent limitation goals to the maximum extent practicable(s).