



City of
SANTA CLARITA

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August 15, 2013

Emel G. Wadhvani
Senior Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Wadhvani:

Subject: SWRCB/OCC File A-2236(a) through (kk), City of Santa Clarita Response as Interested Party

Thank you for the opportunity to comment on this critical, statewide NPDES Permit issue. As written in the notice dated July 8, 2013, there are two questions we are requested to answer.

1. Is the watershed management program/enhanced watershed management program alternative contained in the Los Angeles Municipal Separate Storm Sewer System (MS4) Permit an appropriate approach to revising the receiving water limitations in MS4 permits?
2. If not, what revisions to the watershed management program/enhanced watershed management program alternative of the Los Angeles MS4 Permit would make the approach a viable alternative for receiving water limitations in MS4 permits?

The City of Santa Clarita (City) supports the concept of the watershed management program/enhanced watershed management program alternatives in the Los Angeles MS4 Permit for compliance with receiving water limitations. The receiving water limitation language should fully support the watershed management program/enhanced watershed management programs for full compliance. The City believes allowing this option is a reasonable solution to the receiving water limitation provision contained in MS4 Permits across the State. Allowing for a watershed management program/enhanced watershed management program in MS4 Permits will promote long-term success and collaboration for addressing water quality issues associated with stormwater discharges while providing permittees a reasonable opportunity to remain in compliance with the MS4 Permit.

The City, like many other cities in Los Angeles County, is currently in the process of developing an enhanced watershed management plan in order to comply with the MS4 Permit requirements.



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The option to develop these programs was a direct result of 18 months of collaborative negotiation with the Los Angeles Regional Water Quality Control Board. The questions asked of the State suggest there may be changes in the adopted Los Angeles MS4 Permit which could undermine the flexibility and coverage afforded to cities in the Los Angeles region. If it is determined the enhanced watershed management plan no longer affords compliance, there is little incentive for the enormous effort it takes to create and implement the plan. In fact, the City believes taking away this coverage is tantamount to a new MS4 Permit and would require a new MS4 Permit process with revised timelines and regulatory language for the Los Angeles County region. In fact, the City requests expansion of policies and regulations to protect cities who are taking iterative approaches to addressing water quality, such as found in the watershed management plan/enhanced watershed management plan.

Furthermore, the City believes there is room for improvement to protect MS4 permittees from third party lawsuits. These types of lawsuits only result in stifling innovation and creative solutions. Consistent with the Blue Ribbon Panel in 2006, compliance through numeric limits is not feasible in these MS4 Permits. Numeric limits are infeasible in stormwater due to the high variability in the factors influencing stormwater quality. The programs and practices in source control or treatment control technologies have not significantly changed since 2006. Innovation and creativity is necessary to keep progressing in improving water quality in California receiving waters. The watershed management program/enhanced watershed management program alternatives support innovation, creativity, collaboration, and efficiency. Evidence supporting this includes the recent success of the Notices of Intent process for the Los Angeles MS4 Permit.

The current Los Angeles MS4 Permit language supporting watershed management program/enhanced watershed management program alternatives should be bolstered. The City of Santa Clarita supports concepts the California Stormwater Quality Association (CASQA) has advocated. Their approach supports regulatory certainty for the permittees, program certainty for the state, and water quality improvement certainty for California receiving waters. Their approach and model language for receiving water limitations for strategic compliance programs provide specificity and technical analysis. The result is a better and stronger stormwater program that deals with the local conditions, prioritizes the most important actions, and allows cities to iterate over time the reduction of stormwater pollution. Please see the enclosed CASQA approach for the receiving water limitation language.

Thank you for your time and consideration of our comments on this critical issue. If you have questions about this comment letter, please contact Travis Lange at (661) 255-4337 or via email tlange@santa-clarita.com.

Sincerely



Robert Newman
Director of Public Works

RN:HM:OC:eg

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Enclosure

Attachment A

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Part E, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Part E, discharges from the MS4 of stormwater, or non-stormwater, for which a Permittee is responsible, shall not cause a condition of nuisance.

E. STRATEGIC COMPLIANCE PROGRAM

1. General

- a. The purpose of this Part is to allow for a Strategic Compliance Program (hereafter referred to as "Program") to address and provide for compliance with the requirements of this Order. The Program may be organized on a watershed scale or other appropriate basis and shall specify implementation of customized strategies, control measures, and BMPs on an established schedule.
- b. The Program may be structured for a watershed (or subwatershed), or for a jurisdiction or collection of jurisdictions.
- c. Participation in a Program is voluntary, and allows a Permittee to progressively address the highest water quality and/or watershed priorities.
- d. Unless otherwise delineated in this Order, the Program shall include a strategy and schedule for implementing BMPs for constituents that are causing or contributing to exceedances of applicable water quality objectives, or causing a condition of nuisance in specified water bodies. The Program may include, but is not limited to, specifically identified waterbody-pollutant combinations, watershed management plans, volume based controls designed to control the volume of run-off, and multi-benefit regional projects that, wherever feasible, retain the applicable water quality design storm event for the drainage areas tributary to the projects, while also achieving other benefits including flood management and water supply.
- e. As used herein, "design storm" shall refer to the 85th percentile, 24-hour storm event or equivalent.

2. Requirements

- a. The Program shall be designed to address (i) applicable TMDL requirements in Part ..., (ii) contributions to exceedances of water quality standards in Parts ..., and (iii) non-stormwater discharges that are to be effectively prohibited pursuant to Part The Program shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP).
- b. The Program shall identify the water quality priorities and establish goals to be addressed by the Program. Interim and final goals may take a variety of forms such as TMDL established requirements (e.g., waste load allocations, water quality based effluent limits, etc.), action levels, pollutant concentration, load reductions, performance standards, impaired water bodies to be delisted from the List of Water Quality Impaired Segments, Index of Biotic Integrity (IBI) scores, runoff volume reduction, or other appropriate metrics described in the Program.

- c. The Program shall be based on or include an evaluation of existing water quality conditions for the jurisdiction(s), watershed, sub-watershed and/or waterbody-pollutant combinations that are being addressed with the Program.
- d. Based on the evaluation of historic and existing water quality conditions, the Program shall classify water body-pollutant combinations into categories to assist in prioritizing Program efforts. Examples of categories may include: classification of water body-pollutant combinations for which wasteload allocations are established pursuant to an adopted TMDL; classification of pollutants where a TMDL has not yet been developed but where 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 are causing or contributing to the impairment; and, classification of 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 on occasion may exceed applicable receiving water limitations contained in this Order and for which MS4 discharges are causing or contributing to the exceedance.
- e. The Program shall identify potential sources within the jurisdiction or watershed for the highest priority water quality issue(s) as specified in the Program. The Program shall identify known and suspected stormwater and non-stormwater pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and other stressors related to MS4 discharges associated with the water quality priorities.
- f. A customized or modified monitoring program shall be submitted as part of the Program.
- g. Based on the findings of the source assessment, the goals to be achieved within each Program area shall be prioritized and sequenced. Program priorities shall include at a minimum:
 - i. TMDLs
 - ii. Receiving waters where data indicate impairment or exceedances of receiving water limitations or violations of Discharge Prohibition, and the findings from the source assessment implicates discharges from the MS4 as a primary source of the impairment.
- h. The Program shall identify strategies, control measures, and BMPs to implement through their individual Stormwater Management Plans, and/or collectively on a jurisdictional, watershed or sub-watershed scale.
- i. The Program shall include methodology(ies) that will assess the effectiveness of implementation strategies, control measures and BMPs selected to address the priority water quality issues of concern.
- j. The Program shall incorporate compliance schedules from adopted TMDLs and, develop interim milestones and dates for their achievement in a manner that is consistent with the TMDLs. The Program shall also include compliance schedules and interim milestones and dates to measure progress towards addressing other water quality priorities that have been identified.
- k. The Program shall include an adaptive management process that provides for review of Program implementation at appropriate intervals. The adaptive management process must evaluate the following: 1) Progress toward achieving TMDL requirements according to established compliance schedules; 2) Progress toward achieving improved water quality in MS4 discharges and addressing Receiving Water Limitations and Discharge Prohibition; 3) Progress towards

achievement of any other identified milestones; and 4) Re-evaluation of water quality priorities based on more recent water quality data. Based on the review, the Permittees shall report proposed Program modifications to the Regional Water Board in the Program's Annual Report. Such modifications shall be implemented upon Regional Water Board approval.

3. Process for Development and Approval

- a. Permittees that elect to develop a Program or have an existing or modified program recognized as a Strategic Compliance Program shall notify the Regional Water Board and establish a mutually agreed upon schedule for development and submission of the Program or modification of an existing program.
 - i. Such notification shall specify the Permittee(s) requested submittal date. The requested submittal date should reflect the complexity associated with the Program being developed by the Permittee(s).
 - ii. As part of the notification, Permittees shall identify applicable interim and final TMDL-based requirements and their associated compliance deadlines. Permittees shall identify control measures, where possible from existing TMDL implementation plans that have been or will be implemented by participating Permittees concurrently with the development of a Program to ensure that MS4 discharges achieve compliance by applicable compliance deadlines occurring prior to approval of a Program.
- b. Until the Program is approved by the Executive Officer, Permittees that elect to pursue a submission pursuant to this Part shall:
 - i. Continue to implement control measures in their existing stormwater management Plans, 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 control measures to eliminate non-stormwater 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 control measures for MS4 discharges to achieve compliance with interim and final TMDL-based requirements by the applicable compliance deadlines occurring prior to approval of a Program.
 - iv. Permittees that do not submit a Program by the mutually agreed upon submittal date as set forth in provision Part E.3.a.i (unless such date has been extended by the Executive Officer), shall be subject to the baseline requirements in Part ... and shall demonstrate compliance with receiving water limitations pursuant to Part ... and with applicable interim water quality based effluent limitations in Part

4. Implementation

- a. Each Permittee shall begin implementing the Program upon approval by the Regional Water Board or the Executive Officer on behalf of the Regional Water Board, in accordance with the schedule for implementation set forth in the Program.
- b. Permittees may request an extension of deadlines for achievement of interim milestones and final compliance dates (unless final compliance dates are specifically

dictated by adopted TMDLs). Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request justification for the extension. Extensions shall be subject to approval by the Regional Water Board Executive Officer.

- c. Prior to the effective final and interim compliance dates for TMDLs, and upon a timely request from a Permittee or the Permittees, the Board shall consider the Permittees' ability to comply with the interim and final TMDL requirements and if necessary, reopen the Order or the approved TMDL. In considering the requesting Permittees' ability to comply, the Permittee shall demonstrate to the satisfaction of the Regional Water Board that it is unable to develop sufficient BMPs to timely achieve compliance with interim or final TMDL requirements because the necessary BMPs would be either technically infeasible or would otherwise result in a substantial hardship to the Permittee.

5. Compliance determination.

- a. A Permittee's compliance with an approved Program shall constitute a Permittee's compliance with requirements of this Order that the approved Program is intended to address, including the receiving water limitation provisions in Part D.
- b. If a Permittee fails to meet a requirement or date for its achievement in an approved Program, the Permittee shall be subject to the Provisions of Part D for the waterbody-pollutant combination(s) that were to be addressed by that requirement until that requirement is met.
- c. Upon notification of a Permittee's intent to submit a Program and prior to approval of the Program, a Permittee's compliance with the following shall constitute a Permittee's compliance with the receiving water limitations in Part D:
 - i. Provides timely notice of its intent to submit a Program;
 - ii. Meets all interim and final deadlines for development/modification of a Program as agreed to by the Regional Water Board's Executive Officer;
 - iii. For the area or waterbody-pollutant combination(s) covered by the Program, targets implementation of control measures in its existing stormwater management program, including watershed control measures to address non-stormwater discharges of pollutants through the MS4 to receiving waters, and known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations; and,
 - iv. Submits for approval its Program within the timeframe as agreed to by the Permittees and the Regional Water Board's Executive Officer.
- d. A Permittee shall be deemed in compliance with an applicable interim and final water quality-based effluent limitation and interim and final receiving water limitation for the pollutant(s) associated with a specific TMDL if any of the following is demonstrated:
 - i. There are no violations of the final water quality-based effluent limitation for the pollutant at the Permittee's applicable MS4 outfall(s);
 - ii. There are no exceedances of applicable receiving water limitation for the pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);

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- iii. 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;
- iv. The Permittee's discharge is within its waste load allocation; or
- v. At regulated development projects or multi-benefit regional projects in watersheds or subwatersheds tributary to the applicable receiving water where Permittees are implementing a Strategic Compliance Program, (i) all non-stormwater and (ii) all stormwater runoff up to and including the volume equivalent to the water quality design storm are retained.