

[PROPOSED CHANGES ARE UNDERLINED]**(FINDINGS REALATED TO THE INCORPORATION OF THE SANTA MONICA BAY BEACHES DRY WEATHER BACTERIA TMDL)**

28. The Regional Board adopted the Santa Monica Bay Beaches Dry Weather TMDL for Bacteria (hereinafter "Dry Weather Bacteria TMDL") on January 24, 2002. The TMDL was subsequently approved by the SWRCB, the Office of Administrative Law (OAL), and the United States Environmental Protection Agency (USEPA) and became effective on July 15, 2003.
29. The Waste Load Allocations in the Dry Weather Bacteria TMDL are expressed as the number of allowable days that the Santa Monica Bay beaches may exceed the Basin Plan water quality objectives for protection of Water Contact Recreation (REC-1) in marine waters, specifically the water quality objectives for bacteria. Appropriate modifications to this order are therefore included in Parts 1 (Discharge Prohibitions) and 2 (Receiving Water Limitations), pursuant to 40 CFR 122.41(f) and 122.62, and Part 6.I.1 of this Order. Additionally, 40 CFR section 122.44(d)(1)(vii)(B) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. Tables 7-4.1, 7-4.2a, and 7-4.3 of the Basin Plan set forth the pertinent provisions of the Dry Weather Bacteria TMDL. They require that during Summer Dry Weather there shall be no exceedances in the Wave Wash of the single sample or the geometric mean bacteria objectives set to protect the Water Contact Recreation (REC-1) beneficial use in marine waters. Accordingly, a prohibition is included in this order barring **direct** discharges from a MS4 to Santa Monica Bay that result in exceedance of these objectives. Since the TMDL and the waste load allocations contained therein are expressed as receiving water conditions, Receiving Water Limitations have been included in this order that are consistent with and implement the zero exceedance day waste load allocations.
30. Pursuant to Federal Regulations at 40 CFR 124.8, and 125.56, a Fact Sheet was prepared to provide the basis for incorporating the Dry Weather Bacteria TMDL into this Order. The Fact Sheet is hereby incorporated by reference into these findings.
31. The iterative approach to regulating municipal storm water is not an appropriate means of implementing the SMB Summer Dry Weather WLAs for any and all of the following reasons: (a) The WLAs do not regulate the discharge of storm water; (b) The harm to the public from violating the WLAs is dramatic both in terms of health impacts to exposed beachgoers, and the economic cost to the region associated with related illnesses; (c) Despite the fact that more than a decade and a half has passed since MS4 permittees were required to eliminate illicit connections/discharges (IC/ID) into their MS4s, few permittees have adopted an **aggressive proactive** approach to eliminating IC/IDs, and their **reactive-measured** approach has not eliminated standards violations at the beaches; **and** (d)

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Few permittees have ever documented revisions to their SQMP to address chronic exceedances of water quality standards.; and (e) The primary means of compliance is anticipated to be through diversion of dry weather flows to sanitary sewers. To the extent the Permittees intend to rely upon diversions, such structural changes to the MS4 are not achieved by an "adaptive" approach in a manner contemplated by the regulations related to storm water BMPs.

32. The Receiving Water Limitations have been revised to implement the Summer Dry Weather waste load allocations set forth in Basin Plan Table 7-4.1 (attached as Appendix A to this order). These Receiving Water Limitations apply at the compliance monitoring sites identified in the Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004.¹ Compliance with the Receiving Water Limitations shall be determined using shoreline monitoring data obtained in conformance with the Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004.

33. If the Receiving Water Limitations are exceeded at a compliance monitoring site, the Regional Board will generally issue an appropriate investigative order pursuant to Cal. Water Code § 13267 or § 13225 to the Permittees and other responsible agencies or jurisdictions within the relevant subwatershed to determine the source of the exceedance. **Following these actions, Regional Board staff will generally evaluate the need for further enforcement as follows:**

- a) If the Regional Board determines that the exceedance did not result from discharges from the MS4, then the MS4 Permittees would not be responsible for violations of these provisions.
- b) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that their MS4 **does not discharge dry weather flow** into Santa Monica Bay ~~has been diverted to a sanitary sewer~~, those Permittees would not be responsible for violations of these provisions even if the Receiving Water Limitations are exceeded at an associated compliance monitoring site.
- c) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that ~~they are treating~~ their MS4 **summer dry weather** discharge into Santa Monica Bay **is treated to a level**s that **does not violate-exceed** either the single sample or the geometric mean bacteria objectives, those Permittees shall not be responsible for violations of these provisions even if the

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1. If the Regional Board determines that publicly owned storm drains that flow during dry weather are situated at additional shoreline locations, the *Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan* may be revised by the Regional Board Executive Officer approval, after providing the opportunity for public comment, to include these locations as compliance monitoring sites.

Receiving Water Limitations are exceeded at an associated compliance monitoring site.

- d) If the Regional Board determines that one or more Permittees have caused or contributed to violations of these Receiving Water Limitations, the Regional Board will consider appropriate enforcement action, including a cease and desist order with or without a time schedule for compliance, or other appropriate enforcement action depending upon the circumstances and the extent to which the Permittee(s) has endeavored to comply with these provisions.

34. A Permittee would not be responsible for violations of these provisions if **the Executive Officer determines that the Permittee ~~it~~ has adequately** documented through a source investigation of the subwatershed, pursuant to protocols established under Cal. Water Code 13178, that bacterial sources originating within the jurisdiction of the Permittee have not caused or contributed to the exceedance of the Receiving Water Limitations.

35. Water Code section 13389 exempts the Regional Board from compliance with Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of waste discharge requirements. Therefore the Regional Board is not required to prepare environmental documents to evaluate this permit modification. Nevertheless, the Regional Board has considered the policies and requirements set forth in Chapters 1 through 2.6 of CEQA, and further, has considered the final substitute environmental documents for the Santa Monica Bay Beaches Bacteria TMDL.

F. Implementation

- 1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.
- 2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the

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discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

- 3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.
- 4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

[PERMIT LANGUAGE CONTINUES AS ADOPTED IN ORDER 01-182]

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