

California Regional Water Quality Control Board, Los Angeles Region
Los Angeles County MS4 Permit
Response to Comments on the Tentative Order
WATERSHED MANAGEMENT PROGRAM MATRIX

Section/Topic	Comment	Commenter(s)	Response	Change Made
USEPA TMDLs	Section E.3.a (page 114): It is not clear from the Tentative Permit whether this was a grammatical oversight or a purposeful intent for cities such as Downey subject to a US EPA TMDL not to be given the option of implementing the MCM (as all other permittees are) in lieu of developing a WMP. For permittees such as Downey which are in multiple TMDL watersheds, it should be clear that Management Area Programs established by permittees for US EPA TMDL do not apply to the entire City unless specifically designated as such within the Watershed Management Program.	Downey; Norwalk	<p>Watershed Management Programs are voluntary and may be developed jointly by all Permittees within a watershed, or individually. However, because USEPA TMDLs do not contain an implementation program, if a Permittee does not choose to develop a Watershed Management Program Plan for USEPA TMDLs, the Permittee will need to demonstrate compliance with the numeric WLAs established in the USEPA TMDLs immediately based on monitoring data collected under the MRP of the Order.</p> <p>Where a Permittee chooses to develop a Watershed Management Program, the Permittee is only responsible for carrying out the Watershed Management Program(s) in the portions of their jurisdictions that lay within the watershed addressed by the WMP.</p>	None
USEPA TMDLs	<p>Please make these two provisions consistent with each other on multiple points as follows:</p> <p>Clarify at VI.C.1.e. that a Permittee may submit an</p>	Peninsula Cities Detailed; SMBBB Detailed	The Regional Water Board encourages the joint development of Watershed Management Programs by all Permittees within a watershed; however, Permittees may elect to develop a Watershed Management Program individually for the portion of their jurisdiction within a particular watershed. The order has been revised to make this clarification. Furthermore, for Watershed	Language of Part VI.C.1.e and Part VI.E.3.b was revised.

	<p>individual Watershed Management Program Plan.</p> <p>Clarify at VI.E.3.b. that a Permittee may jointly submit a plan with some or all Permittees subject to the WLAs contained in the USEPA established TMDL.</p>		<p>Management Programs to implement USEPA TMDLs, Permittees may either individually or jointly – with some or all Permittees within the watershed – submit a WMP. The order has been revised to make this clarification.</p>	
Sources Beyond Control of Permittees	<p>The draft order seems to be silent on the critical issue of sources of pollutants outside the authority of MS4 permittees (e. g. aerial deposition, upstream contributions, discharges allowed by another NPDES permit, etc.). We request that permittees be allowed to demonstrate that some sources are outside the permittee’s control and not responsible for managing or abating those sources</p>	Inglewood; La Verne	<p>The permittees have ultimate authority and responsibility to prohibit, prevent, or otherwise control discharges that enter and exit the portions of the MS4 for which they are owners and/or operators. Even if the permittees do not themselves generate the pollutants entering/exiting their MS4s, the permittees are nevertheless responsible for ensuring that the pollutants do not reach receiving waters through their MS4. As recently stated by the 9th Circuit Court of Appeals, “the Clean Water Act does not distinguish between those who add and those who convey what is added by others - the Act is indifferent to the originator of water pollution.” (<i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 900.) Thus, the Clean Water Act, and this permit, appropriately places responsibility for preventing or controlling MS4 discharges on the permittees.</p> <p>Municipalities are also required to have the legal authority to control sources of pollutants to the MS4 under 40 CFR section 122.26(d)(2)(i), including the ability to control the contribution of pollutants from one portion of the MS4 to another portion through inter-agency agreements among Co-Permittees, and to implement measures to control the sources of pollutants to the MS4 through their Storm Water Management Program (SWMP). The order addresses Permittees’ legal authority to control pollutant discharges into and from its MS4 in Part VI.A.2.a. The order also addresses</p>	None

			discharges authorized by a separate individual or general NPDES permit in Part III.A.1.a., which identifies these discharges as authorized non-storm water discharges, and Part III.A.4.e., which provides a mechanism for notifying the Regional Water Board if an exceedance of a receiving water limitation is caused by an authorized non-storm water discharge with coverage under a separate NPDES permit.	
TMDL Compliance	The permit needs to clearly state that watershed management programs and the reasonable assurance analysis can be used for TMDL compliance purposes.	Inglewood; La Verne	The order states in Part VI.E.2.d.i.(4) that a Permittee shall be considered in compliance with an applicable interim water quality based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL if the Permittee has submitted and is fully implementing an approved WMP pursuant to Part VI.C. It is premature to consider application of this WMP compliance demonstration option to the final effluent limitations and final receiving water limitations – most of which have deadlines outside the term of the tentative order. More data are needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality to have the necessary assurance that these BMPs will ultimately achieve the final effluent limitations. The Regional Water Board will evaluate the effectiveness of this WMP compliance determination approach in ensuring that interim effluent limitations for storm water are achieved during this permit term. The tentative order has been revised to include a re-opener prior to the final compliance deadlines, if practicable, that would allow an action based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges based on the Regional Board’s review of relevant research on storm water quality and control technologies and the effectiveness of the approach in achieving interim WQBELs.	Re-opener provision added to Part VI.A.7
Adaptive	The permit should clarify that the adaptive	City of La Verne	Section 122.26(d)(2)(iv) of Title 40 of the Code of Federal Regulations requires Permittees to have a	Revisions to Part VI.C. to address

	<p>management process is equivalent to the iterative process described in the Receiving Water Limitation provision and provide the legal justification for the adaptive management process.</p>		<p>management program that includes a continuing planning process. Additionally, the maximum extent practicable (MEP) technology standard applied to storm water pursuant to CWA section 402(p)(3)(B)(iii) has been described as an “ever evolving” standard; adaptive management is therefore necessary to achieve the MEP standard.</p> <p>The adaptive management process outlined in Part VI.C.7 is similar to the iterative process in Part V.A.3. In the case of water body-pollutant combinations addressed by a TMDL, the adaptive management process is directed and governed by any interim WQBELs and associated compliance schedules. For water body-pollutant combinations not addressed by a TMDL, For water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Where exceedances of receiving water limitations are newly identified after approval of a Watershed Management Program, Permittees are required to address these during the adaptive management process by evaluating the sources of the exceedances, identifying watershed control measures to address MS4 contributions of the pollutant to receiving waters, conduct a Reasonable Assurance Analysis to ensure that the watershed control measures will be sufficient to control the discharge of the pollutant, and identify requirements and milestones and dates for their achievement that will result in compliance with</p>	<p>water body pollutant combinations not otherwise addressed by a TMDL.</p>
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			receiving water limitations as soon as possible. A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program, including the “iterative process” in Part V.A.3. Additionally, Part VI.C.7.a.ii.(1) states that the WMP adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.	
Adaptive	The adaptive management/iterative approach and timing should be consistent between individual permittees (“jurisdictional watershed management program”) and the watershed management program.	City of La Verne	The tentative order has been revised such that evaluation and adaptive management for WMPs is required every two years after approval of the WMP. Where a Permittee chooses to not develop a WMP, Attachment E – MRP, specifies an annual evaluation of the jurisdictional SWMP. For Permittees that do not choose to develop a WMP, the baseline SWMP requirements are already established in the order, and adaptive management can begin after the first year of permit implementation.	Revisions to Part VI.C.7
Adaptive Management	There should be only one revision of the Watershed Management Programs required during the Permit term, and only when the monitoring data supporting the adaptive management/iterative process demonstrates that the modification is warranted.	Peninsula Cities Detailed; SMBBB Detailed; City of Torrance Detailed; La Verne	The Regional Board acknowledges the effort required to comprehensively evaluate and modify the WMP through the adaptive management process. Therefore, the tentative order has been revised to require the adaptive management process for WMP only once every two years after approval of the WMP. This will equate to once during the five-year permit term.	Revisions to Part VI.C.4 – Table 9 and Part VI.C.7.a.i
Adaptive Management	Eliminate the separate jurisdictional requirements of Part IV.6.b. entirely as it is redundant with Part IV.6.a.	Peninsula Cities Detailed; SMBBB Detailed; City of Torrance Detailed; La Verne	The tentative order has been revised to remove these requirements for Permittees that elect to participate in a Watershed Management Program.	Deletion of Part VI.C.7.b
Implementation	The timelines to develop new watershed	City of El Segundo; City of Hidden	The Regional Board acknowledges the effort involved in developing a collaborative WMP among a group of	Revisions to Table 9

	management programs are too short.	Hills; Inglewood; Malibu; Vernon; Pomona; Torrance; Santa Monica	Permittees. It should be noted that in many cases significant effort has already been invested by many Permittees in developing TMDL implementation plans in these watersheds, and the Regional Water Board expects that Permittees will use these plans as a foundation to build upon as they develop their WMPs. It is also critical to ensure that there are not delays in implementation of storm water management measures, and therefore, the Board balanced the time necessary to develop a WMP with consideration of the time that would be remaining in the permit term to implement approved WMPs. However, in further consideration of these concerns, the order has been revised to allow 18 months for Permittees to jointly develop a WMP, if the Permittees commit to implementation of certain early actions during the development of the WMP. The timeframe for Permittees who elect to individually develop a WMP, or for those who do not commit to certain early actions, will remain at one year for submittal of a draft WMP plan.	Revisions to Part VI.C.4.c.
Implementation	It is unclear how the current implementation of the stormwater program and TMDL compliance will be handled during the interim period before development of the watershed management program. For those entities that choose this path, significant efforts in existing programs and implementation plans should be allowed to continue while we evaluate new MCMs as part of the watershed management program.	City of La Verne	The tentative order has been revised to clarify that Permittees are required to continue to implement 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), and implement watershed control measures sufficient to achieve WQBELs and receiving water limitations applicable to the Permittee(s) pursuant to Part VI.E. and Attachments L-R in satisfaction of deadlines occurring prior to approval of the Watershed Management Program.	New subpart under Part VI.C.4.

Implementation	Six months is not enough time to prepare preliminary analyses and obtain necessary funding allocations to make a decision whether or not to participate in a Watershed Management Program.	City of Malibu; Santa Monica	The Regional Board selected the timeline for notification in order to ensure steady progress toward developing a WMP early in the permit term, and in consideration of the anticipated schedule for a final outcome of the LA County Flood Control District's Water Quality Funding measure, which is expected by late Spring 2013.	None
Public Review	Any Alternative Requirement Must Include a Public Review Process and Hearing before the Regional Board The Draft Permit currently allows for creation of Watershed Management Programs or use of Local Ordinance Equivalence programs to replace the Permit's LID requirements. Any provision that deviates from the Permit's LID performance criteria and/or other core Planning and Land Use requirements must go through the process of public review and hearing before the Regional Board.	TreePeople	The Board may delegate certain actions to its Executive Officer, including approval of Watershed Management Programs. In addition, the order includes a provision (Part VI.A.5) that requires public review of all documents submitted to the Regional Water Board Executive Officer for approval. Additionally, Part VI.A.6 provides that any formal determination or approval made by the Executive Officer may be reviewed by the Regional Water Board. A Permittee or a member of the public may request such review within 30 days of such decision by the Executive Officer.	None
Feasibility of Compliance	Consideration of the technical and financial feasibility of complying with water quality standards should be	City of La Verne	The Board considered technical and financial feasibility when it adopted the water quality objectives. (See <i>In re Los Angeles County Municipal Storm Water Permit Litigation</i> (Sup. Ct. Los Angeles County, March 24, 2005, Case No. BS 080548), Statement of Decision from	None

	included in the watershed management program.		<p>Phase II Trial on Petitions for Writ of Mandate, p. 21.) In addition, the Board considered the technical and financial feasibility of each TMDL during the TMDL adoption process. Recognizing the effort required to attain TMDL WLAs, the Regional Board established implementation schedules that allow Permittees to implement watershed control measures over time. These long implementation schedules – many from 18 to 25 years long -- allow costs to be spread out over many years and allow time for technological innovation and advances.</p> <p>The Watershed Management Program option allows permittees to submit a plan, either individually or in collaboration with other permittees, that would allow for actions to be prioritized based on specific watershed needs. In the end, it is up to the permittees to determine the effective BMPs and measures needed to comply with this permit. Permittees can choose to implement the least expensive measures that are effective in meeting the requirements of the permit.</p>	
General	Part VI.C of the Permit does not appear to provide cities wishing to participate in a Watershed Management Program the option of developing their own programs, outside of the Watershed Management Program, to remain consistent with the requirements of the Permit. For example, a watershed group may develop a Watershed Management Program for TMDL and Monitoring purposes, and choose to implement the Minimum	City of Hidden Hills; City of Pomona	Individual Permittees participating in a Watershed Management Program may choose to implement some or all of the baseline requirements of Part VI.D without any customization. Part VI.C.3.b.iv.(4)(e) states that each WMP plan shall identify the responsibilities of each participating Permittee for implementation of watershed control measures, which include the minimum control measures traditionally included in a Permittee’s SWMP. An individual Permittee may specify its responsibilities under the Watershed Management Program as including implementation of the baseline provisions identified in Part VI.D of the order, as well as other responsibilities related to implementation of other provisions of the order, including those related to TMDLs in Part VI.E. and Attachments L through R of the order.	None

	<p>Control Measures as currently prescribed by the Permit. This may not be appropriate for all cities participating in the Watershed Management Program. Individual permittees, when participating in a Watershed Management Program, should be able to choose which elements of the Program they will participate in and which elements they will opt out of, preferring to comply with those elements as stated in the Permit. The City therefore requests that the Permit include clarifying language enabling individual permittees to participate in certain elements of the Watershed Management Program while providing the individual permittees the flexibility to otherwise comply, on their own, with the Permit</p>			
<p>General</p>	<p>Recommend that language be clarified to explicitly provide the option of development of a Watershed Management Program by one or more permittees which would address multiple watersheds and associated</p>	<p>Peninsula Cities Detailed</p>	<p>A group of Permittees could elect to develop multiple Watershed Management Programs and integrate these into one comprehensive plan as long as the comprehensive plan met the requirements of Part VI.C for each individual watershed addressed.</p>	<p>None</p>

	TMDLs at once within those jurisdiction(s)' boundaries.			
General	Provision VI.C.3.b.iv.(4)(e) that Watershed Management Program plans clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures. This measure should protect conscientious Permittees from being held liable for the actions or inactions of other Permittees. We would appreciate confirmation of our interpretation that the provision provides protection against joint and several liability related to the actions or inactions of "bad actors." Making this clear in the permit will help convince every Permittee that it will be held responsible for its own actions or inactions, and that it will not be possible to hide and depend on the actions of other entities for protection	City of Signal Hill	<p>Where a Permittee elects to develop a Watershed Management Program and is fulfilling its responsibilities as identified in Part VI.C.3.b.iv.(4)(3), it will be considered in compliance with Parts III.A.4 and VI.D, receiving water limitations in Part V.A. that are explicitly addressed by the WMP, and interim WQBELs and receiving water limitations in Part VI.E and Attachments L-R.</p> <p>The permit addresses the comment concerning joint and several liability by allowing permittees who may have commingled discharges to establish a plan for determining compliance.</p>	None
General	We question the language of Provision VI.C.1.f.iii	City of Signal Hill	The monitoring and assessment program must be designed to, and measure, progress relative to applicable	None

	<p>related to executing a monitoring and assessment program to determine progress toward achieving applicable limitations and/or action levels. We understand that the Regional Board would prefer to have a numeric indicator to monitor progress toward achievement of applicable water quality standards, but we are concerned with the wording of the requirement.</p> <p>Specifically, we believe that the proposed wording is insufficient to prevent diversion of time, effort, and money due to third-party lawsuits based on temporary exceedances. The wording of the Provision should be modified to state that the monitoring and assessment program should be based on true benchmarks – indicators, rather than compliance points – designed to promote an adaptive management process during the implementation period.</p>		<p>WQBELs and receiving water limitations. The revised tentative order allows compliance to be demonstrated through implementation of actions in an approved WMP for receiving water limitations in Part V.A., and interim WQBELs and interim RWLs per Part VI.E.2.c and Part VI.E.2.d.i.(4).</p> <p>Additionally, the monitoring program includes municipal action levels for storm water to promote a prioritization and adaptive management.</p>	
General	Include a statement such as, “The Watershed Management Program	City of Torrance Detailed	The Fact Sheet for the order enumerate some of the benefits of a watershed management program identified by the commenter, including reduced cost of improving	None

	<p>provides flexibility to allow Permittees to develop an integrated watershed management program to address all of the water quality effluent requirements of this order in a cost efficient and effective manner. The Watershed Management Program provides the flexibility to allow Permittees to coordinate efforts on a watershed or subwatershed basis to leverage resources in an effort to increase cost efficiency and effectiveness and to closely align Watershed Management Programs with Integrated Monitoring approach</p>		<p>water quality and increased effectiveness.</p>	
<p>General</p>	<p>VI.C.3.a. 47 This section seems to be focused only on TMDLs; however an integrated plan needs to also address water quality RWL and MAL pollutants of concern Revise sentence as follows “...water quality based effluent limitations and/or receiving water limitations established pursuant to TMDLs, RWLs and MALs, as set forth...”</p>	<p>City of Torrance</p>	<p>The order identifies three categories of water body-pollutant combinations that should be addressed in a WMP. These are: 1) those for which WQBELs and/or RWL are established pursuant to a TMDL in Part VI.E. and Attachments L through R; 2) those that are identified on the CWA section 303(d) List and MS4 discharges may cause or contribute to the impairment; and 3) those that exceed RWLs and MS4 discharges may cause or contribute to the exceedance. Municipal action levels (MALs) are a tool that can be used to prioritize drainage areas for BMP implementation.</p>	<p>None</p>

General	<p>VI.C.3.b.i. 47 This whole section 3. seems to focus on water bodies and then on whole watersheds. To implement the most effective BMPS the Permittees much identify the High Priority sub-watersheds that contribute the greatest pollutant loads. Revise VI.C.3.b.i. to read, “Permittees shall identify strategies, control measures and BMPs to implement through their individual storm water management program or watershed management program, that can be implemented by watershed, sub-watershed or by jurisdiction, with the goal of creating an integrated efficient program to focus individual and collective resources on watershed priorities.”</p>	City of Torrance Detailed	<p>The Regional Board expects that Permittees will identify high-priority drainage areas within which to implement watershed control measures. One tool that can be used to prioritize subwatersheds that contribute the greatest pollutant loads is municipal action levels (MALs). However, the ultimate goal is to implement measures through the watershed to achieve applicable WQBELs and/or to ensure that MS4 discharges do not cause or contribute to exceedances of RWLs.</p>	None
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General	<p>Page 45 Section VI.C.1.b Participation in a WMP is voluntary ...</p> <p>Will the Board provide a template to which all WMPs should be tailored?</p>	City of Santa Monica Detailed	The Regional Board does not anticipate providing a template. However, Regional Board staff will be available to work with Permittees as they develop WMPs. Additionally, several local examples of WMPs exist and can be used by Permittees to help guide the development of their WMPs.	None
General	<p>Page 46 Section Table Submit draft plan to Regional Water Board ...</p> <p>reference in Part column should be VI.C.2.c, not VI.C.2.b.</p>	City of Santa Monica Detailed	The reference in Table 9 has been corrected.	Revisions made
General	<p>Page 47 Section Table 9 Submit final plan to Regional Water Board ...</p> <p>reference in 'Part' column should not be VI.C.2.c, the latter refers to draft plan, not final plan. Perhaps an additional subsection "e" describing the final plan (due in 3 months) is missing under VI.C.2?</p>	City of Santa Monica Detailed	The reference in Table 9 has been deleted for clarity.	Revisions made
General	<p>Page 47 Section Table 9 Begin implementation ...</p> <p>Due date column states upon submittal of final plan; VI.C.4 states upon approval of the plan. Does this mean that submittal of final plan constitutes approval by Regional Water Board EO?</p>	City of Santa Monica Detailed	Table 9 has been revised to state, "upon approval of final plan by Regional Water Board Executive Officer."	Revisions made

<p>General</p>	<p>Page 47 Section 2.d. ... do not elect to develop WMP . .</p> <p>City requires more time to compare the costs of doing a WMP with other Permittees vs. going alone and complying with Part VI.E.2.d.i in lieu of a WMP. Might be cheaper to do latter but do not know unless we do an economic analysis. The permit is not clear who has to do this analysis; assume the city, and this will require staff time, e.g. cost.</p>	<p>City of Santa Monica Detailed</p>	<p>The order provides Permittees with sufficient time -- an approximately 7½-month period from order adoption (50 days between the adoption date and the effective date of the order plus six months) -- to evaluate whether they will pursue an individual or a collaborative WMP.</p>	<p>None</p>
<p>General</p>	<p>Page 47 Section 3.a.i . . . Shall identify water quality priorities . . .</p> <p>Include an evaluation of existing water quality conditions, characterize storm water. New requirement. New cost. The city has to do this. Request the Board to tell us how a priority is defined and why this is required if the priorities are the WQBELs and receiving water limits. Seems like duplicative work and extra cost. City believes that the Board should do evaluation and</p>	<p>City of Santa Monica Detailed</p>	<p>Development of a WMP is voluntary. However, where a Permittee chooses to develop a WMP, the requirement to identify water quality priorities based on a water quality characterization addresses federal requirements in 40 CFR sections 122.26(d)(1)(iv) and 122.26(d)(2)(iii), which require MS4 permittees to provide information characterizing the quality and quantity of discharges covered by the permit, and 40 CFR section 122.26(d)(2)(iv), which requires permittees to develop a management program that describes priorities for implementing controls. Section 122.26(d)(2)(iv) states that these management programs may be established on a watershed basis.</p>	<p>None</p>

	<p>characterization, and inform the city of why this is necessary.</p>			
General	<p>Page 48 Section 3.a.iii.(1) Source Assessment</p> <p>New requirement. New costs. City requests that the Board identify known and suspected pollutant sources, or inform the City why it needs to do it. Request the Board to inform the city if a report to the Board is required. Request Board to define "Findings." The City already manages its stormwater program and reports in annual report. These appear to be new requirements to report on. Request the Board to define what is a watershed model, and validate why the city has to do this and what the report should contain. City requests a template.</p>	City of Santa Monica Detailed	<p>Development of a WMP is voluntary. However, where a Permittee chooses to develop a WMP, the requirement to identify known and suspected storm water and non-storm water pollutant sources is consistent with federal requirements in 40 CFR sections 122.26(d)(1)(iii) and 122.26(d)(2), which require MS4 permittees to identify known and potential sources of MS4 discharges to receiving waters.</p> <p>"Findings" in this part refers to the conclusions reached by the Permittee based on a review of available data.</p> <p>Regarding watershed models, inclusion of this information in a Permittee's source identification and water quality characterization is consistent with 40 CFR section 122.26(d)(2)(ii)-(iii), which discusses estimates of pollutant load that may be based on modeling data. Many TMDLs to which Permittees are subject included watershed modeling in their development. Permittees are required to review available data; if there are no available watershed model results then Permittees are not obligated to include this in their source assessment.</p>	None
General	<p>Page 49 Section 3.a.iv. Prioritization . . . Issues will be prioritized and sequenced . . . Other Receiving Water Considerations . . .</p> <p>(1) Request Board to</p>	City of Santa Monica Detailed	<p>Prioritizing and sequencing means ranking water quality priorities and scheduling actions to address the water quality issues according to their priority. The requirement to prioritize is consistent with 40 CFR section 122.26(d)(2)(iv).</p> <p>Watershed Management Programs are subject to Board or Executive Officer approval. Therefore, there will be</p>	None

	<p>define or explain the meaning of prioritizing and sequencing of issue, and why the Board is asking the City to do this and not the Board do. The city does not know if it prioritizes issues that the Board will agree to them.</p> <p>(2) City requests that the Board inform the city what data it needs to use for controlling pollutants as described in this section. The section is not clear on what the city has to do.</p>		<p>opportunity for Regional Water Board review of and input on the Permittee’s priorities prior to final approval of the WMP.</p> <p>Part 4.a. iv.(1)-(2) requires Permittees to enumerate, prioritize and sequence watershed priorities. “Controlling” is used in this context to express that the priority is to control pollutants in each of the categories in this part. Part 4.b. contains the requirements for Permittees to select watershed control measures to address the priorities in Part 4.a.iv.</p>	
General	<p>Page 48 Section VI.C.3.a.ii.(2) ... Pollutants for which data indicate water quality impairment in the receiving water ...</p> <p>Does this refer to pollutants of concern in the 303(d) list for which TMDL's will not be established, i.e. "TMDL Requirement Status C"?</p>	City of Santa Monica Detailed	<p>This part refers to water body-pollutant combinations that are included on the Section 303(d) List, but which are not yet being addressed by a TMDL.</p>	None
General	<p>Page 50 Section 3.b.2. Implement controls necessary to achieve all limitations . . .</p> <p>Board should inform city when this is due. If a city does not have enough funds to implement</p>	City of Santa Monica Detailed	<p>The deadlines for achieving interim and final WQBELs and receiving water limitations vary based on the TMDL-based compliance schedules included in Attachments L through R. These compliance schedules are based on those established in the TMDL, and consider the time necessary to plan, test and monitor results. If a Permittee anticipates that it will not be able to achieve compliance with the final WQBELs and receiving water limitations pursuant to the compliance</p>	None

	controls, there will be a long process to get voter approval, and voters may not pass new fees. A city does not know what controls are necessary without time to plan, test, and monitor over a specific time period, which is what the timeline follows for the Bay Bacterial TMDL. Would seem that a city will be out of compliance very soon into the permit if not as soon as the permit is executed.		schedule, a Permittee may request a time schedule order with justification to allow additional time to implement necessary controls to achieve the final WQBELs.	
General	<p>Page 51 Section iv.2, 3 Permittees identify . . . Permittees compile</p> <p>New requirement. New costs. City has to identify discharges and compile control measures into what? Request that the Board inform city of what document is required. Iv.3.c. refers to "the plan." Board needs to define this plan. It is not described in permit. Board should provide template.</p>	City of Santa Monica Detailed	<p>Watershed Management Programs are voluntary. However, the requirement to identify watershed control measures to address non-storm water discharges of pollutants is consistent with requirements in Parts III.A and IV.D.10, which are not new requirements. Addressing illicit discharges is required by 40 CFR section 122.26(d)(2)(iv)(B).</p> <p>Regarding the compilation of TMDL control measures, if a Permittee chooses to develop a WMP this is necessary to meet one of the fundamental objectives of a WMP, which is to identify and implement strategies, control measures, and BMPs to achieve WQBELs and receiving water limitations – many of which are derived from TMDLs to which Permittees are subject.</p> <p>The “plan” is the Watershed Management Program plan.</p>	None
General	Page 52 Section iv.4, 5 Each plan shall include . . . Permittees shall conduct Analysis . . .	City of Santa Monica Detailed	Watershed Management Programs are voluntary. However, this requirement is necessary to provide an adequate demonstration that the watershed control measures (i.e. BMPs) will be sufficient to achieve	None

	<p>New requirement. New costs. City requests that the Board define and describe what this Plan is. City has to ID BMPs, public and private; has to document each with lots of statistics; has to do a quantitative analysis, and modeling to prove BMPs will work. The city did this for Bacterial TMDL at great expense and dramatically increased the cost of compliance with no confirmed environmental improvement. Models are known to be inaccurate and not a reflection of what actually happens, vis-a-vis water quality. Installing BMPs, testing them, tracking improvements and failures, and changing the BMP program, without penalties and lawsuits, the iterative process is proven to work.</p>		<p>applicable WQBELs and receiving water limitations. See 40 CFR sections 124.8, 124.9, and 124.18. This is also consistent with USEPA guidance on developing permit requirements based on TMDL WLAs (USEPA 2002, 2010 memoranda).</p>	
General	<p>Pages 52-53 Section 3.c. Compliance Schedule</p> <p>New requirement. New cost. Staff time and resources to gather all the required data to develop and then follow the schedule, milestones,</p>	City of Santa Monica Detailed	<p>The compliance schedules contained in Attachments L through R are based on the implementation timelines adopted by the Regional Water Board and fully approved in the TMDLs to which the Permittees are subject. While an MS4 permit may include a compliance schedule that is shorter than the maximum time allowed by the TMDL implementation timeline, the permit's compliance schedule cannot be longer. (40 CFR §§ 122.44(d)(1)(vii)(B) and 122.47; Cal. Wat. Code §§</p>	Table 9 – Watershed Management Program Implementation Requirements

	<p>deadlines. City requests a longer timeline and schedule than in the existing draft permit.</p>		<p>13263 and 13377.) Additionally, if a compliance schedule exceeds one year, it must include interim milestones and dates for their achievement pursuant to 40 CFR section 122.47.</p> <p>Regarding the timeline for development of the WMP, the tentative order has been revised to allow for additional time where Permittees work collaboratively to develop a WMP, and where Permittees commit to certain early actions.</p>	
<p>General</p>	<p>Page 55 Section 6.b. Jurisdictional Stormwater Management Program Adaptive Process . . .</p> <p>New requirement. New cost. Request that the Board clearly describe, define that this section means, is, and the goal or purpose of it. Request the Board to clarify, why does a.i. which states "annually" differ from here, "at least annually"? Board should provide a template.</p>	<p>City of Santa Monica Detailed</p>	<p>This section has been deleted from the revised tentative order. Permittees that elect to develop a WMP will conduct the adaptive management process on a watershed scale per Part IV.C.7.a, while Permittees that do not elect to develop a WMP will conduct an adaptive management process on a jurisdictional basis as required in response to exceedances of receiving water limitations in Part V.A. and through the Permittee's annual reporting requirements in Attachment E – MRP.</p>	<p>Part VI.C.7.b deleted</p>

<p>Iterative Process</p>	<p>The Regional Board should also specifically reference Watershed Management Programs in Parts III and V in order to better integrate the Watershed Management Program provisions with the iterative process in the Discharge Prohibitions and the Receiving Water Limitations parts of the permit. In addition to achieving compliance with Order 99-05, such modifications to the proposed permit would foster implementation of the adaptive management process described in the Watershed Management Program provisions and reduce the vulnerability of the Permittees to enforcement actions and third-party lawsuits when they are engaged in an iterative (adaptive management) process through a watershed-based program to address exceedances of water quality objectives and water quality standards in a prioritized, systematic manner, as the Regional Board is encouraging with the incorporation of the Watershed Management</p>	<p>City of Signal Hill</p>	<p>Watershed Management Programs are voluntary; therefore, provisions related to how a Permittee can address other requirements of the order through a Watershed Management Program are kept within Part VI.C.</p> <p>For waterbody-pollutant combinations not addressed by a TMDL, Part VI.C. of the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p>	<p>Revisions to Part VI.C.</p>
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	Program provisions into the permit.			
Design Storm	The City of Signal Hill requests that the permit be structured to use the runoff from the 85 th percentile, 24-hour storm event as a consistent design storm for both BMP design and enforcement of water quality standards. We have seen the Power Point presentation given by Dr. Youn Sim on the development of a water quality design storm at the 2011 CASQA Annual Conference. It builds on the work done by the Regional Board's design storm task force and presents a compelling argument for the 85 th percentile, 24-hour design storm for both design and enforcement. Such an action by the Regional Board would help convince municipalities that they are not wasting money by investing in BMPs and other control measures in the absence of a physical limit on the storm size for which they have to meet water quality standards	City of Signal Hill	The tentative order has been revised to provide Permittees with the option to develop an <i>enhanced</i> Watershed Management Program. An enhanced Watershed Management Program is one that comprehensively evaluates opportunities, with the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects to control MS4 discharges of storm water by, wherever feasible, retaining the 85 th 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. Where retention of the 85 th percentile, 24-hour storm event is not feasible, the enhanced Watershed Management Program shall include a Reasonable Assurance Analysis to demonstrate that applicable water quality based effluent limitations and receiving water limitations shall be achieved through implementation of other watershed control measures. Permittees who elect to participate in such a program will be provided with a longer time period to develop an enhanced Watershed Management Program in recognition of the time necessary to establish partnerships, provide opportunities for meaningful stakeholder involvement and plan regional, multi-benefit projects. However, these programs must ensure that requirements to comply with (1) technology based standards (i.e. MEP), (2) other core provisions (e.g., elimination of non-storm water discharges of pollutants), and (3) WQBELs and RWL pursuant to TMDL compliance schedules with deadlines occurring prior to final approval of the enhanced WMP are not delayed. Further, Permittees must implement some early actions related to LID in order to be afforded the additional time to develop an enhanced WMP.	Revisions to Part VI.C.
True Source Control	The City is concerned that	City of Signal Hill	The reference to structural and non-structural controls is	None

	<p>Provision VI.C.3.b.iii (Watershed Control Measures) does not sufficiently recognize pollution prevention, including what the California Stormwater Quality Association (CASQA) has described as <i>true source control</i>. Signal Hill, other cities within the region, and the Coalition for Practical Regulation contributed financial support, lobbyist services, and support letters for CASQA’s efforts to address the major source of copper brake pad dust through a State legislative control measure, SB 346. The WMP section of the Permit should be re-written to recognize and encourage true source control as a pollution prevention measure that will ensure long-term compliance with water quality standards</p>		<p>intended to include pollution prevention measures, including “input change”, “operational improvement”, “production process change”, and “product reformulation” as defined in Cal. Water Code section 13263.3(b)(1).</p>	
True Source Control	<p>We acknowledge that Provision VI.C.3.b.IV(4) does recognize pollution prevention as a non-structural best management practice that can be included in Watershed Management Plans. However, we</p>	City of Signal Hill	<p>The order provides Permittees with flexibility to select the most effective watershed control measures to achieve permit requirements, including pollution prevention measures.</p>	None

	believe that true source control, including product substitution and materials substitution, as well as product take-back, needs more emphasis in regional and statewide efforts to improve water quality			
TMDL Control Measures	<p>VI.C.3.b.iv.(3) 51</p> <p>In many cases the Watershed Management Program will identify BMPs that address multiple pollutants and multiple TMDLs, therefore “control measures” previously identified would need to be substituted by different BMPs with greater effectiveness, i.e. BMPs identified in existing TMDL Implementation Plans may not be appropriate for multiple pollutants.</p> <p>Revise (3) to read “Permittees shall list control measures that have been identified in TMDLs and corresponding implementation plans and identify those control measures to be modified to support the Reasonable Assurance Analysis for each TMDL</p>	City of Torrance Detailed	The tentative order has been revised to add the following provision: “Permittees shall identify those control measures to be modified, if any, to most effectively address TMDL requirements within the watershed.”	Part VI.C.4.b.iv.(3) – Added sentence after 1 st sentence

General	While the Fact Sheet indicates the WMP can be performed individually or collectively, the language in the WMP Provisions should affirm that WMPs can be done by one single Agency and/or a Watershed Group. In Part VI.C.1., add language that states "Permittees may participate in the Watershed Management Program individually or collectively" so that the Fact Sheet and Provision language are consistent.	LACFCD	The revised tentative order clarifies that a WMP can be developed and implemented by a Permittee individually or collaboratively with other Permittees in the watershed.	Part VI.C.1.e
General	Receiving Water Limitations have been repeatedly described as targets for which Minimum Control Measures and other BMPs should be designed. However, receiving water quality is the result of many other concurrent discharges besides MS4s, including nonpoint and instream sources. Receiving water limitations should not be considered as effluent targets.	County of Los Angeles	The revised tentative order has been clarified in several places that each WMP shall identify and implement strategies, control measures, and BMPs to ensure that MS4 discharges do not cause or contribute to exceedances of receiving water limitations, recognizing that there may be other types of non-MS4 discharges to a particular water body that may affect the overall quality of the receiving water.	Language has been revised in several places.
General	Part VI.C.1.d. should be revised to read: "The goal of the Watershed Management Programs is	County of Los Angeles	The tentative order has been revised as requested.	Part VI.C.1.d

	to ensure that discharges from the Los Angeles County Permittees' MS4..."			
Attachment A	The definition of "Reasonable Assurance" that clearly states its criteria and legal justification should be added to Attachment A	County of Los Angeles	Federal regulations at 40 CFR sections 124.8, 124.9 and 124.18 support the permit provision that requires Permittees to conduct a reasonable assurance analysis. Furthermore, USEPA has stated in both its November 22, 2002 memo and its November 12, 2010 revision to the 2002 memo that the permit's record must provide an adequate demonstration that, where a BMP-based approach is selected, the BMPs required by the permit will be sufficient to implement applicable WQBELs. The permit requirement to conduct a reasonable assurance analysis is equivalent to "providing an adequate demonstration." Additional detail is provided in Part VI.C.4.b.(iv)(5) of the revised tentative order regarding the requirements for a Reasonable Assurance Analysis.	Revisions to Part VI.C.4.b.(iv)(5)
Attachment A	A definition of "Numeric Action Levels" should be added to Attachment A	County of Los Angeles	Non-storm water action levels are described in the Fact Sheet (Attachment F) Part XIII.F.1.c.i. "Approach for Deriving Action Levels". Municipal Action Levels (MALs) are described in Attachment G, Part VIII.	None
Process				
Timelines for Implementation	The timeline described in the permit fails to take into account the 2001 permit's requirements that Permittees develop and put into effect implementation plans, and that time and effort have already been spent in developing plans that may be applicable to the draft permit's requirements. Where plans have been properly implemented under the	Environmental Groups	The timelines in the order are reasonable and consistent with applicable timelines, in particular those established in TMDLs. Permittees are generally required to continue to implement their existing storm water management program and within 6 months of the effective date of the permit, implement any new or enhanced elements of their storm water management program requirements in Part VI.D.. If Permittees elect to develop a Watershed Management Program, which is voluntary, it is reasonable to allow time to develop a comprehensive plan, and to allow additional time where permittees elect to develop a WMP collaboratively and commit to early actions to be implemented concurrently with program development. The order requires ongoing	None to timelines for implementation of TMDL provisions; some changes to allow additional time for development of collaborative WMPs

	2001 permit, additional time should not be necessary. Where Permittees have failed to comply with permit requirements of their own devise, providing additional time only rewards prior poor performance.		implementation of a Permittee’s current storm water management programs during WMP development. While the tentative order has been revised to allow more time to develop collaborative WMPs, this is conditioned on Permittees’ commitments to early implementation actions.	
Timelines of Implementation	While implementing the WMP places Permittees in compliance with certain permit requirements, it is not clear if Permittees will be in compliance during the development phase. Furthermore, more clarity is needed on whether or not Permittees will continue existing programs during the development phase. Recommend language provided.	County of Los Angeles	The tentative order has been revised to clarify that Permittees electing to develop a WMP are required to continue to implement their existing storm water management programs, including actions within each of the six categories of minimum control measures, as well as watershed control measures to achieve WQBELs and RWL pursuant to Part VI.E. and Attachments L-R with compliance deadlines occurring prior to approval of the Watershed Management Program by the Regional Water Board Executive Officer.	Part VI.C.2.d – New provision added
Timelines for Implementation	The Board should synchronize the preparation of the draft WMP Plan with the integrated monitoring plan and provide sufficient time for data/information gathering and analyses to prepare the draft WMP Plan. The County recommends 2 years after Permit adoption date.	County of Los Angeles	The timelines for submittal of the WMP plan and the IMP or CIMP have been aligned in the revised tentative order.	Table 9 and Attachment E
Due date for implementation of	The proposed due date for start of implementation of	County of Los Angeles	The tentative order has been revised to state that implementation of the WMP shall begin upon approval	Table 9

WMP	the WMP as listed in Table 9 is not consistent with the narrative in Part VI.C.4. Table 9 should be revised to state that the due date for beginning implementation of the WMP is " <u>Upon submittal approval of final plan by the Regional Water Board Executive Officer.</u> " The Board should also add an item to the table that provides a deadline for when the Board will approve the implementation plan.		of the final plan by the Regional Water Board Executive Officer.	
<i>Program Development</i>				
Source Assessment and Control Measures	Requiring Permittees to address 303(d) listing pollutants outside of a TMDL process in Part VI.C.3. forces Permittees to further spread their already scarce resources. The focus should be on TMDL pollutants. The Board should focus WMP efforts on TMDL pollutants (Category 1), and designate State (303(d)) Listing pollutants (Category 2) optional for source assessment, selection and implementation of control measures, etc. Or, as an incentive for Permittees to	County of Los Angeles	Where receiving waters are not meeting water quality standards due to MS4 discharges and the pollutant(s) is not already addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Where MS4 discharges are causing or contributing to exceedances of receiving water limitations, and enhanced storm water and non-storm water controls are available to control the pollutants in the MS4 discharge, it is preferable to directly implement these through the	Revisions to Part VI.C.

	address non-Category 1 pollutants, the permit should provide that a Permittee will not be considered in violation of the receiving water limitations for a water body-pollutant combination not covered under a TMDL if that water body-pollutant combination is being addressed by an approved, expanded WMP.		Permittees' Watershed Management Programs rather than go through the administrative process of developing a TMDL first and then implementing these control measures.	
Sizing of Structural Controls	The staff working proposal required that structural controls be sized <i>at a minimum</i> to treat the volume of stormwater runoff from the 85th percentile, 24-hour storm. However, the tentative permit removed this item. To be consistent with the TMDL requirement (Part VI.E.2.d.4, page 113), re-insert this item from the working proposal and delete the "at minimum" language.	LACFCD	<p>Part VI.E. of the tentative order has been revised to state that "Where necessary to achieve applicable WQBELs and receiving water limitations, structural storm water BMPs should be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm at a minimum ..."</p> <p>The Regional Water Board recognizes that Permittees may employ a variety of control measures – both structural and non-structural. Therefore, the language has been provided to allow flexibility for Permittees to determine the best combination of measures and the most effective sizing for structural control measures to achieve applicable WQBELs and receiving water limitations. The purpose of the WMP is to give Permittees the flexibility to identify the most effective suite of watershed control measures to meet permit requirements. Therefore, the requirement for sizing of structural controls has not been included in Part VI.C. except in the case of an enhanced Watershed Management Program, discussed below.</p> <p>The tentative order has been revised to provide Permittees with the option to develop an <i>enhanced</i> Watershed Management Program. Recognizing the</p>	Part VI.E.2.d.4

			benefits of storm water capture and infiltration, an enhanced Watershed Management Program is one that comprehensively evaluates opportunities, with the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects to control MS4 discharges of storm water by, wherever feasible, retaining the 85 th 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. Where retention of the 85 th percentile, 24-hour storm event is not feasible, the enhanced Watershed Management Program shall include a Reasonable Assurance Analysis to demonstrate that applicable water quality based effluent limitations and receiving water limitations shall be achieved through implementation of other watershed control measures.	
Minimum Control Measures	The listing of the minimum control measures in the Fact Sheet (VI.B.) that can be modified through the WMP omits the Planning and Land Development Program, which is inconsistent with Part VI.C.3.b.iv.	County of Los Angeles	The tentative order has been revised to remove the Planning and Land Development Program from the list of minimum control measures that can be modified in a Watershed Management Program. However, Part VI.D.7.d.i. allows a Permittee that has adopted a local LID ordinance prior to the adoption of this Order, and which includes a retention requirement numerically equal to the 0.75-inch, 24-hour rain event or the 85 th percentile, 24-hour rain event, to submit documentation to the Regional Board that the requirements in the local ordinance will provide equal or greater reduction in storm water pollutant loading and volume as would have been obtained through strict conformance with Part VI.D.7.c.i. or Part VI.D.7.c.ii and, if applicable, Part VI.D.7.c.v.	Part VI.C.4.b.iv.(1)(a).
<i>Adaptive Management Process</i>				
Adaptive Management Process	Parts VI.C.6.a. and VI.C.6.b. requires Permittees to base their adaptive management	County of Los Angeles	The tentative order has been revised to clarify that the adaptive management process should be based on a consideration of the listed factors in Part VI.C.7.a.i.(1)-(7). The requirements in Part VI.C.7.b have been	Part VI.C.7.a.i and Part VI.C.7.b.

	<p>process on several factors. Clarity should be added to indicate Permittees must consider the factors, but it is not a requirement to include all of them. Language proposed.</p>		<p>deleted. Permittees that elect to develop a WMP will conduct the adaptive management process on a watershed scale per Part IV.C.7.a, while Permittees that do not elect to develop a WMP will conduct an adaptive management process on a jurisdictional basis as required in response to exceedances of receiving water limitations in Part V.A. and through the Permittee’s annual reporting requirements in Attachment E – MRP.</p>	
<p>Adaptive Management Process</p>	<p>There are conflicting timelines in the Fact Sheet (Page F-44) and WMP section (Page 54) for implementing the iterative process to adapt the WMP to become more effective. While the Fact Sheet states the iterative process must be implemented at least twice during the permit term, the WMP section states it should be done on an annual basis starting in 2015. Consistent with the language used in the Fact Sheet, the iterative process should be implemented at least twice during the permit term.</p>	<p>County of Los Angeles</p>	<p>The tentative order and Fact Sheet have been revised to require Permittees to conduct the adaptive management process every two years from the date of WMP approval; however, reporting on permit implementation is required annually.</p>	<p>Part VI.C.7.a.i and Attachment F – Part VI.B.</p>