

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600**

**Order No. 01-182 (as amended)
NPDES No. CAS004001**

**PROPOSED AMENDMENT TO THE COUNTY OF LOS ANGELES
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT**

ORDER ON REQUESTS FOR ADDITIONAL EVIDENCE

The Regional Board received the following timely requests by parties for the admission of additional evidence into the administrative record. These were on behalf of the following parties: Mark Gold and Kirsten James on behalf of Heal the Bay, by Richard Montevideo, Rutan & Tucker, LLP, on behalf of the Cities of Arcadia, Carson, Commerce, Irwindale, Monterey Park, Signal Hill, South Gate, and Vernon¹, and by the County of Los Angeles and Los Angeles County Flood Control District. The requests are hereby addressed as follows:

<u>Evidence</u>	<u>Ruling</u>	<u>Reasons</u>
Request by County of Los Angeles and Los Angeles County Flood Control District:		
1. Settlement Agreement between Los Angeles Regional Board and City and County of Los Angeles regarding the establishment of the Trash TMDL	Granted	The document provides relevant background regarding the need to include certain provisions in the TMDL and the permit.
2. Document Nos. 1 and 11, requested by Rutan & Tucker, LLP.	Granted	See Rutan & Tucker, items 1 and 11.
Requests by Heal the Bay:		
1. Heal the Bay's Comment Letter, dtd. 8/21/06, on the establishment of the Trash	Denied	The proceedings about whether and how to establish the Trash TMDL are not relevant to the proposed action to incorporate permit provisions

¹ The letter from Rutan & Tucker indicates that the comments contained therein are also on behalf of the City of Downey, which is an "interested person" in this proceeding. Evidence, however, may only be submitted by parties, and therefore these rulings on requests to admit additional items of evidence do not apply to the City of Downey.

TMDL		consistent with the TMDL's WLAs.
2. Order No. R8-2009-0030	Denied	Existing applicable legal authorities provide adequate authority for incorporation of the Trash TMDL and WLAs established therein into the MS4 permit in the manner proposed. Injecting orders, permits, or other decisions from other Regional Water Quality Control Boards into this administrative record would be cumulative and unnecessary, and would open the door to inclusion of large amounts of marginally relevant or irrelevant materials that are not particularly helpful to the Los Angeles Regional Board in considering the particular merits of the proposal in this matter.
3. USEPA's Comment Letter dtd. 6/3/09 re: SWRCB/OCC File A-1780	Granted	The letter provides clarification on the proper interpretation of EPA's 2002 memo regarding incorporation of WLAs in storm water permits.
4. Ocean Protection Council, <i>Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter</i>	Granted	The document provides detailed information on trash and marine debris issue, and identifies control of trash as a high priority for the OPC.
5. Grant request on behalf of the Gateway IWRM Authority	Granted	The grant application provides detailed information on the achievability of the WLAs established in the TMDL using certified full capture devices.
6. Clean Water State Revolving Fund American Recovery and Reinvestment Act Status Report (10/30/09)	Granted (as to version posted 11/6/09)	The materials document State Board funding that has been allocated to the permittees specifically to comply with the Trash TMDL and any obligations they may have under the permit provisions under consideration.
Requests by Rutan & Tucker, LLP, on behalf of Arcadia, Carson, Commerce, Irwindale, Monterey Park, Signal Hill, South Gate, and Vernon:		
1. USEPA Memorandum: <i>"Establishing Total Maximum Daily Load"</i>	Granted	The memorandum provides non-binding guidance by USEPA generally on the subject of storm water TMDLs and storm water permitting

<p><i>(TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Requirements Based on Those WLAs” (11/22/02)</i></p>		<p>to implement TMDLs.</p>
<p>2. Commission on State Mandates, Statement of Decision on Cases 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21, (9/30/09)</p>	<p>Denied</p>	<p>The Commission’s proceedings about whether any particular provision in an order of the Regional Board effects a compensable unfunded state mandate, pursuant to Article XIII B, section 6 of the California Constitution is not relevant to the issues in this proceeding and do not affect the authority of the Regional Board or the legal integrity of any decision the Regional Board might make. The Commission has exclusive jurisdiction to hear claims for subvention under Article XIII B, section 6.</p>
<p>3. Minute Order (3/13/08), <i>Cities of Arcadia et al v. SWRCB, et al</i>, Orange County Superior Court No. 06CC02974; Judgment (11/26/08); Writ of Mandate (11/10/08)</p>	<p>Denied</p>	<p>The <i>Cities of Arcadia</i> matter is currently on appeal, and there is no final judgment. Furthermore, the Superior Court rejected the petitioners’ requests for a prohibitory injunction, determining that halting implementation of the basin plan was not appropriate even assuming the writ of mandate is ultimately affirmed. As such, records from that litigation are not relevant to this proceeding. Finally, even if the writ is affirmed on appeal, the Trash TMDL was already sustained against the cities’ challenge to the Water Code §13241 analysis undertaken when adopting the TMDL, and the cities have made no showing that the analysis there is not equally applicable to the instant proceeding, assuming such an analysis was required in this proceeding.</p>
<p>4. Excerpts from Water Boards’ and Intervenors’ appellate briefs in <i>Cities of Arcadia v. SWRCB</i></p>	<p>Denied</p>	<p>See item 3., above.</p>
<p>5. Order No. WQ 91-04</p>	<p>Moot</p>	<p>Precedential decisions and formal policies of the SWRCB, like any other legal authority may be cited by the parties without the need to</p>

		physically include them in the administrative record. A copy of the document will be included as a courtesy and convenience, but without prejudice to the right of the Regional Board or any party to cite to other State Board orders or policies, or legal authority that may not have been physically included in the administrative record. This ruling shall not be construed as a ruling on the relevance of the document in question to this proceeding.
6. Order No. WQ 96-13	Moot	See item 5., above.
7. Order No. WQ 98-01	Moot	See item 5., above.
8. Order No. WQ 2000-11	Moot	See item 5., above.
9. Order No. WQ 2001-15	Moot	See item 5., above.
10. Order No. WQ 2006-0012	Moot	See item 5., above.
11. <i>“The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities”</i> (6/19/06), Storm Water Panel on Numeric Limits	Granted	The report provides non-binding conclusions by the Storm Water Panel to the State Water Resources Control Board generally on the subject of the use of numeric effluent limitations in storm water permitting.
12. Water Boards’ Opposition to Test Claim Cases 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (4/18/08), before the Commission on State Mandates	Denied	See item 2., above.
13. Letter from Deputy Assistant Administrator Benjamin Grumbles to Bart Doyle, City of Sierra Madre (8/22/03)	Denied	The letter is hearsay and lacks foundation.
14. Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure	Moot	See item 5., above.

and Options		
15. League of California Cities, Water Policy Guidelines (draft dtd. 10/14/09)	Denied	The document is not a final document, and therefore cannot be construed as representing the perspective of the League of California Cities. The League, as any other interested person, had the right to submit its own comments had it chosen to do so.
On the Regional Board's own motion, the following documents are also hereby added to the administrative record and are admitted into evidence:		
1. Excerpts of Transcript, comments of Desi Alvarez on behalf of the Gateway IRWM Authority, Los Angeles Regional Board Meeting (11/5/09)		The comments presented to the Los Angeles Regional Board demonstrate the permittee's agreement that the proposed permit amendments are attainable.
2. USEPA's Comment Letter dtd. 5/29/08 re: Ventura County MS4 Permit		The comments submitted to the Los Angeles Regional Board demonstrate USEPA's support for the use of numeric effluent limitations to incorporate WLAs into MS4 permits.
3. USEPA's Comment Letter dtd. 4/9/09 re: Ventura County MS4 Permit		The letter responds to Heal the Bay's suggestion to use the approach from the Ventura County MS4 Permit.
4. 2006 Reports of Waste Discharge by the LA MS4 Permittees (6/12/06); Review of the Report(s) of Waste Discharge for the Reissuance of the LA County MS4 Permit (7/12/06)		The Reports of Waste Discharge trigger administrative extension of the provisions of Order No. 01-182, as amended. The Regional Board's responses document the administrative extension of Order No. 01-182.
5. Consent Decree between USEPA and Heal the Bay et al (3/22/99)		The document demonstrates the required pace of TMDL establishment in the Los Angeles Region. Establishment of TMDLs triggers the legal obligation to implement them. This document responds to comments that TMDL development and implementation should stop pending a revamping of the TMDL program.
6. 2008 303(d) List		The document demonstrates continued impairment of the Los Angeles River Watershed for Trash and the extensive

	nature of water quality impairments in the Los Angeles Region, which requires the establishment and implementation of TMDLs under section 303(d), and federal and state authorities.
7. Statewide Industrial Storm Water Permit, SWRCB Order No. 97-03 DWQ	The Permit responds to comments about the manner in which private property is being monitored for compliance.
8. Statewide Construction General Storm Water Permit, SWRCB Order No. 2009-0009-DWQ	See response to item 7, above.
9. Photograph of the banks of the Los Angeles River under the 7 th Street Bridge, appearing in Los Angeles Times, Tues. 11/24/09, pp. A20-21, associated with article: <i>“Where Fear Has Set Up Camp”</i>	Context. Shows current condition of relevant portions of the Los Angeles River.

Copies of any of these materials or other items identified in the Administrative Record Index can be obtained by contacting Sandra Kelley at (213) 576-6619 or skelley@waterboards.ca.gov.

IT IS SO ORDERED.

December 2, 2009



Madelyn Glickfeld,
Vice Chair