

Response to Comments on Tentative Amendment to the Los Angeles County MS4 Permit to Incorporate Changes from the Revised Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs (Order No. R4-2012-0175; NPDES Permit No. CAS004001)

Commenters	Date of Letter
TECS Environmental Compliance Services on behalf of the Cities of Compton, South El Monte, and San Fernando	August 10, 2016
County of Los Angeles and Los Angeles County Flood Control District	August 11, 2016
City of South Pasadena	August 11, 2016

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1.1	TECS Environmental	The Regional Board’s primary reason for re-opening the Los Angeles County MS4 permit is to revise the compliance schedule for the trash TMDLs. The compliance deadline date for these TMDLs is 2016, which establishes a zero final effluent limitation. The re-opener also revises the trash TMDLs to include a trash monitoring and reporting program (TMRP) and a Plastic Pellet Monitoring and Reporting program (PMRP).	<p>The proposed amendment does not revise the compliance schedules in the permit for the Ballona Creek and Los Angeles River Trash TMDLs, which are September 30, 2015 and September 30, 2016, respectively. These schedules remain the same as is currently established in the permit.</p> <p>The primary reasons for reopening the LA County MS4 Permit are identified in Finding 6 of tentative Order No. R4-2012-0175-A01. Consistent with the revised trash TMDLs for the Los Angeles River and Ballona Creek watersheds, the proposed amendment revises how Permittees may demonstrate compliance with the final water quality-based effluent limitations and adds plastic pellet monitoring and spill response requirements for the Los Angeles River watershed and requirements for receiving water monitoring for trash.</p>
1.2	TECS Environmental	The revised trash TMDL also excludes the City of Santa Clarita from the Los Angeles River Trash TMDL and adds	This comment on responsible agencies identified in the revised Los Angeles River Watershed Trash TMDL is outside the scope of the Los Angeles Water Board’s

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		<p>the Los Angeles County Flood Control District (LACFCD) to both the Los Angeles River and Ballona Creek Trash TMDLs. However, it does not exclude cities located in Reach 2 of the Rio Hondo, which is not identified on the 303(d) list as being impaired.</p>	<p>consideration of the tentative amendment. As indicated in the <i>Notice of Opportunity for Public Comment and Notice of Public Hearing</i>, dated July 12, 2016:</p> <p>The matter before the Los Angeles Water Board is a proposed amendment to the LA County MS4 Permit to incorporate modifications to select permit provisions to ensure consistency with the Revised Trash TMDLs, as well as limited administrative information as described above. As such, oral and written comments in this matter are limited to the proposed permit modifications only. All other aspects of the LA County MS4 Permit, as well as the validity of the Revised Trash TMDLs, are not issues before the Los Angeles Water Board in this proceeding. Any comments or evidence concerning matters not at issue in this proceeding will not be considered, responded to, or included in the administrative record for this matter. Comments and/or evidence concerning whether and how the Los Angeles Water Board incorporates modifications consistent with the Revised Trash TMDL in the LA County MS4 Permit is appropriate and within the scope of this proceeding.</p> <p>The proposed amendment's removal of the City of Santa Clarita and addition of the Los Angeles County Flood Control District (LACFCD) as responsible parties are both consistent with the revised Los Angeles River Watershed Trash TMDL, which was revised by the Los Angeles Water Board in 2015 and became effective upon approval by the U.S. Environmental Protection Agency (USEPA) earlier this year. The revisions to the TMDL excluded the City of Santa Clarita from the</p>

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			<p>TMDL because it was determined that, within the 0.09 square mile of the City of Santa Clarita’s area within the LA River watershed, there are no storm drains or MS4 infrastructure. The addition of the LACFCD as a responsible agency identified in the Los Angeles River Watershed Trash TMDL was made for clarification purposes as it is already a responsible agency in the Santa Monica Bay Debris TMDL and, thus, also in the Ballona Creek Watershed Trash TMDL.</p> <p>The revised Los Angeles River Watershed Trash TMDL assigns waste load allocations for all MS4 Permittees within the Los Angeles River watershed, including the cities located in Reach 2 of the Rio Hondo. The TMDL has assigned waste load allocations for these cities since the TMDL’s initial establishment in 2002, and no change was made to the identification of these responsible parties or the assigned waste load allocations when the TMDL was revised in 2015.</p>
1.3	TECS Environmental	<p>Re-opening the MS4 to admit the Trash TMDL raises several concerns, including:</p> <p>(1) The MS4 Permit is under legal challenge currently and should not include additional requirements associated with the trash TMDLs or adding plastic pellets as a new pollutant pending litigation.</p>	<p>The fact that there are current legal challenges to the LA County MS4 Permit in no way prohibits or restricts the Los Angeles Water Board from amending the Permit. The reopener provisions of the LA County MS4 Permit, Part VI.A.7, contemplates such action may occur and sets forth the conditions under which the Los Angeles Water Board could reopen and modify the Permit. Subpart a.iv. provides that a cause for taking such an action includes:</p> <p><i>To incorporate provisions as a result of future amendments to the Basin Plan, such as a new or revised water quality objective or the adoption or</i></p>

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			<p><i>reconsideration of a TMDL, including the program of implementation. Within 18 months of the effective date of a revised TMDL or as soon as practicable thereafter, where the revisions warrant a change to the provisions of this Order, the Regional Water Board may modify this Order consistent with the assumptions and requirements of the revised WLA(s), including the program of implementation</i></p> <p>Further, many LA County MS4 Permittees have urged the Los Angeles Water Board to reopen and modify the Permit to include provisions consistent with the revised Los Angeles River Watershed Trash TMDL before the September 30, 2016 compliance deadline.</p>
1.4	TECS Environmental	(2) While it may be necessary to re-open the MS4 Permit to extend the deadline dates it is not critical at this time to add plastic pellets as a trash-subset that requires regulation and monitoring at this time. Nor is it necessary to impose a monitoring program for trash. If the trash TMDLs require full capture or partial capture plus institutional controls to meet the zero TMDL target, then why is monitoring necessary? This represents another cost to be added on an already extremely costly MS4 Permit.	<p>As noted in response to Comment No. 1.1, the proposed amendment does not modify or extend any compliance deadline contained in the LA County MS4 Permit.</p> <p>Regarding plastic pellet and receiving water monitoring requirements, these are required elements of the recently revised trash TMDL and have been included in the proposed amendment accordingly. The necessity and costs for these requirements were evaluated when the TMDL was reconsidered and revised. Such comments on the validity of the monitoring requirements are outside the scope of the Los Angeles Water Board’s consideration of the proposed amendment.</p> <p>Regarding monitoring specifically, receiving water monitoring is included in virtually all TMDLs to provide the ability to assess the status of the water body</p>

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			<p>over time and to enable regulatory agencies, responsible parties, and other stakeholders to assess the degree of improvement and the effectiveness of implementation actions. Receiving water monitoring will provide information that will allow for a better understanding of the relationships between BMP implementation, including the operations and maintenance of full capture systems and partial capture devices, load reductions, and resultant conditions in the receiving water.</p>
1.5	TECS Environmental	<p>(3) It would seem more appropriate for the Regional Board to require industrial facilities, subject to the General Industrial Activity Stormwater Permit (GISP) that manufacture, use, store, or handle plastic pellets to be responsible for preventing from them being discharged to the MS4. All water boards in the State are now required to include TMDLs into GISPs. The Los Angeles Regional Board should wait until the trash TMDL becomes a GISP requirement to address the issue of plastic pellet discharge to the MS4. If other industries, which are not GISP subject but use, store, handle, or dispose of plastic pellets, they should be subject to illicit discharge prohibitions imposed by MS4 Permits. Public education outreach materials should also be developed to inform businesses and residents of the water quality problems</p>	<p>See response to Comment No. 1.3. Additionally, comments on the revisions to the TMDLs are outside the scope of the Los Angeles Water Board's consideration of the proposed amendment. The appropriateness of the plastic pellet requirements for MS4 permittees and Industrial General Storm Water permittees was evaluated in the Los Angeles Water Board's reconsideration of the TMDLs in 2015.</p> <p>The Industrial General Storm Water Permit already includes requirements for permittees that manufacture, transport, or handle plastic materials to implement BMPs to eliminate discharges to storm drains, which include proper storage, containment, spill response and cleanup protocols. Municipalities that own or operate MS4s must also be prepared for a response to a plastic pellet spill, just as the municipality must be prepared for other types of spills as part of its Illicit Connection/Illicit Discharge Elimination Program. These plastic pellet requirements are consistent with the Santa Monica Bay Debris TMDL, as well as the recently adopted Statewide Trash Amendments</p>

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		posed by “nurdle” types of plastic pellets used in packaging.	(SWRCB, 2015) (p. 91).
1.6	TECS Environmental	<p>(4) Proposing to include plastic pellets as a trash sub-set to be included in the MS4 Permit re-opener is premature. There is little information in the re-opener notice about the need to regulate plastic pellets, especially for the Los Angeles River. There has been no previous discussion initiated by the Regional Board regarding the need for regulating plastic pellets. For example, there is no definition of a plastic pellet (e.g., dimensions, composition, and how it impairs the several reaches of the Los Angeles River and its tributaries). Do plastic pellets include only polystyrene nurdles or do they also include resin pellets used to make plastic products?</p> <p>(5) There also needs to be an explanation of how pellets get are getting into the MS4 (e.g., improper handling, disposal, and storage).</p> <p>(6) Requiring impacted MS4 Permittees to prepare and propose monitoring and reporting plans for both plastic pellets and trash without the Regional Board specifying what should be in those plans invites the same “hit or miss” approach</p>	<p>Comments on the validity of the TMDLs, or revisions thereto, are outside the scope of the Los Angeles Water Board’s consideration of the proposed amendment, as are comments on the WMP/EWMP provisions of the permit. The provisions in the proposed amendment pertaining to plastic pellets are consistent with the revised Trash TMDLs. The necessity for these requirements was evaluated when the TMDL was reconsidered and revised, including the need to regulate plastic pellets in the Los Angeles River Watershed.</p> <p>The LA County MS4 Permit already includes plastic pellet requirements consistent with the Santa Monica Bay Debris TMDL, which includes the Ballona Creek Watershed area. Permittees subject to this TMDL have successfully submitted documentation; spill response plans; and PMRPs in accordance with permit requirements. It is expected that Permittees in the Los Angeles River watershed are able to do the same.</p> <p>The plastic pellet requirements in the TMDL are also consistent with the “Preproduction Plastic Debris Program” outlined in section 13367 of the California Water Code, which addresses preproduction plastics and includes plastic resin pellets. Information regarding plastic pellets was presented in the Staff Report for the TMDL reconsideration.</p> <p>With respect to requirements, the proposed amendment</p>

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		<p>it has taken with the Enhanced Watershed Management Programs (EWMPs), Watershed Management Programs (WMPs), Coordinated Integrated Monitoring Programs (CIMPs) and Individual Monitoring Programs (IMPs). The MS4 Permit is not clear on what these plans should consist of. Nor has the Regional Board has not provided any written guidance on what should be included in these plans. As a consequence, each has gone through several iterations, resulting in permittees having to spend more money on a trial and error process. The Regional Board seems to be saying, “we will tell you (Permittees) if we like it when we see it.” Instead, it is imperative that the Regional Board know what it wants up front and know how much it will cost.</p>	<p>clearly outlines the PMRP requirements for MS4 Permittees based on the presence (or lack of presence) of industrial facilities or activities related to the manufacturing, handling, or transportation of plastic pellets; and commercial or industrial transportation corridors.</p> <p>However, it is acknowledged that standard protocols for plastic pellet monitoring from MS4s are still under development. This is understandable given the size of the pollutant, the complexity of MS4 discharges, and the fact that preproduction plastic pellet requirements are relatively new. This fact, however, does not detract from the need or requirement to control plastic pellet discharges. The lack of a standard protocol will be taken into account when evaluating PMRP submittals.</p>
1.7	TECS Environmental	<p>(7) Pellets should be a TMDL by itself instead of being a sub-set of trash. This TMDL would then focus on the water quality problems posed by pellets in terms of impairment to beneficial uses and the probably sources of plastic pellets.</p> <p>(8) Once a TMDL for plastic pellets is adopted, it could be then incorporated</p>	<p>Comments concerning further revisions to the TMDLs, such as removing the plastic pellet requirements from the Los Angeles River Watershed Trash TMDL and establishing a new plastic pellet TMDL, are outside the scope of the Los Angeles Water Board’s consideration of the proposed amendments to the permit.</p>

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		<p>into the MS4 Permit and addressed through BMPs, including public education to encourage proper use, storage, and disposal. And, if necessary, require the adoption of ordinances to encourage the prohibition on the discharge of pellets to the MS4 and the implementation of BMPs that operate to reduce their discharge. A revision to the industrial/commercial inspection program could also be made to identify facilities that manufacture, use, store, handle, or dispose of plastic pellets. Such facilities would then be made subject to special BMPs focused on the control of these pollutants.</p>	
1.8	TECS Environmental	<p>(9) The MS4 Permit re-opener raises question of the applicability of compliance schedules contained in the trash TMDLs or other TMDLs for that matter. According to the State Board’s policy, which appears to be based on a USEPA policy directive, and federal statute, compliance schedules do not apply to MS4 Permits – only to dischargers that are subject to CWA 301(b)(1)(C), such as industrial dischargers. This would include the trash TMDL compliance schedule. In fact, the Regional Board admitted to this in a letter sent to USEPA Region 9,</p>	<p>Consistent with the revised Trash TMDLs, the proposed amendment does not modify existing numeric water quality-based effluent limitations for trash or any compliance deadlines for responsible permittees in the LA County MS4 Permit. The compliance schedules in the permit for the Ballona Creek and Los Angeles River Trash TMDLs, which are September 30, 2015 and September 30, 2016, respectively, remain the same as is currently established in the permit. As such, these comments, as well as comments concerning the appropriateness of numeric effluent limits, are outside the scope of the Los Angeles Water Board’s consideration of the proposed amendment.</p> <p>Further, compliance schedules consistent with TMDL implementation plans are appropriately already included</p>

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		<p>dated June 23, 2016. Excluding the trash TMDL's compliance schedule from the MS4 Permit would obviate the need to re-open the MS4 Permit.</p> <p>(10) The trash TMDL requires compliance with numeric effluent limitations. However, MS4s are not subject to numeric effluent limitations. According to the aforementioned letter from the Regional Board to USEPA Region 9, effluent limitations are only applicable to dischargers that are subject to CWA 301(b)(1)(C).</p>	<p>in the LA County MS4 Permit. The commenter is referring to the Los Angeles Water Board's June 23, 2016 letter to USEPA. The commenter is misreading and misinterpreting the contents of that letter. That letter has no relevance to the proposed amendment. For example, it does not address trash TMDLs, the Los Angeles River or Ballona Creek watersheds, or the applicability of numeric effluent limitations to MS4 discharges. Rather, in that letter, the Board requested authority pursuant to Clean Water Act section 303(c) to provide compliance schedules in <i>non-MS4 permits</i> consistent with the waste load allocations that are based on California Toxics Rule criteria and associated implementation schedules for the TMDLs for metals in the Los Cerritos Channel and metals and selenium in the San Gabriel River and its tributaries. As noted in this letter, the State's <i>Compliance Schedule Policy</i> does not apply to MS4 permits. The water quality-based effluent limitations and compliance schedules included in the LA County MS4 Permit do not derive or rely on section 301(b)(1)(C) of the Clean Water Act, but rather section 402(p)(3)(B) and/or 303(d).</p> <p>Lastly, numeric effluent limitations for trash discharged from MS4s in the Los Angeles River Watershed have been included in the LA County MS4 Permit since 2009. Nothing in the Los Angeles Water Board's July 23, 2016 letter to USEPA, described above, discusses the appropriateness of numeric effluent limits in MS4 permits or indicates that effluent limitations are only applicable to discharges that are subject to Clean Water</p>

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			Act section 301(b)(1)(C). The letter states, "...effluent limitations in MS4 permits are established pursuant to CWA section 402(p)(3)(B) and, if applicable, section 303(d)."
1.9	TECS Environmental	<p>In light of the foregoing, the following is recommended:</p> <p>(1) Wait until the next MS4 Permit is issued to deal with trash TMDL requirements. This matter should be discussed in the Report of Waste Discharge (ROWD), which MS4 Permittees must submit to the Regional Board by July 1, 2010 [<i>sic</i>]. The ROWD should also include an evaluation of how much trash has been prevented from entering receiving waters and how beneficial uses have been protected or improved as a result.</p> <p>(2) Defer discussion of trash monitoring until the submittal of the ROWD or until discussions for the new L.A. MS4 Permit takes place thereafter.</p>	See response to Comment Nos. 1.3. and 1.4. Part VI.A.7.a.iv. of the LA County MS4 Permit establishes a timeframe of 18 months from the effective date of a revised TMDL or as soon as practicable thereafter to reopen the permit to amend provisions to reflect TMDL revisions. Further, given that the final compliance deadline is September 30, 2016 for permittees subject to the Los Angeles River Watershed Trash TMDL, many permittees have indicated that this reopener is a priority for them. The Regional Water Board has worked diligently to incorporate revisions consistent with the revised TMDL prior to the final compliance deadline.
1.10	TECS Environmental	(3) Eliminate from the trash TMDL MS4 Permittees located in Reach 2 of the Rio Hondo because it is not 303(d) listed for trash.	See response to Comment No. 1.2.
1.11	TECS Environmental	(4) Consider the adoption of a plastic pellets TMDL and include industries that manufacture these materials in its	See response to Comment Nos. 1.5 and 1.7.

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		development. Apply the TMDL only to industries covered under a General Industrial Activity Stormwater Permit (note: all plastic manufacturing facilities are required by federal stormwater regulations to obtain GISP coverage). Industrial dischargers would be subject to a compliance schedule and numeric effluent limitations that could be met through BMPs.	
1.12	TECS Environmental	(5) Re-open the MS4 Permit to remove or extend the deadline dates until the new MS4 Permit adopted. Or, adopt a resolution affirming that TMDL compliance schedules are not applicable MS4 Permittees, only dischargers subject to CWA 301(b)(1)(C). This would obviate the need for re-opening the MS4 Permit.	See response to Comment No. 1.8
2.1	County of Los Angeles and Los Angeles County Flood Control District	As previously communicated to the Regional Water Quality Control Board and State Water Resources Control Board during the Trash TMDLs reconsideration process, the County and the LACFCD have invested significant resources over the last ten years to implement trash reduction best management practices. In addition, the LACFCD has actively worked with the County and the Cities in facilitating the installation of trash control devices on	Comment noted.

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		<p>LACFCD-owned infrastructure. Despite these efforts, technical infeasibilities have precluded the installation of full capture or partial capture trash devices in a limited number of catch basins. The revised TMDLs include alternate compliance pathways in recognition of these challenges. The County and the LACFCD support the alternative compliance approach and its timely incorporation into the MS4 Permit.</p>	
3.1	City of South Pasadena	<p>The City of South Pasadena has reviewed the proposed Amendment to the Los Angeles River Trash TMDL. The City of South Pasadena is inherently a very clean city and has continually demonstrated compliance with the Trash TMDL since the first reporting period in 2008. As documentation of this, the figure below from the 2008 report showed an allowable discharge of over 17,000 pounds, while South Pasadena demonstrated a mere 120 pounds.</p> <p>[Figure included in comment letter]</p> <p>This trend has continued through 2014 and 2015, achieving trash reduction levels of 98.5 percent and 97.7 percent based on the amount of trash deposited</p>	Comment noted.

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		<p>on city streets. When factoring in the additional trash capture inserts that have been installed in targeted catch basins, the compliance levels achieved are even higher.</p> <p>Having continuously achieved reductions approaching 100% for the past 8 years, South Pasadena has the following comments regarding the Trash TMDL Amendment:</p> <ul style="list-style-type: none"> • The city appreciates the Board’s willingness to consider reducing the compliance targets from the impossible to achieve 100%. 	
3.2	City of South Pasadena	<ul style="list-style-type: none"> • Secondly, South Pasadena has no plastic pellet manufacturer or handlers in the city and no transportation thoroughfares that vehicles carrying plastic pellets would travel. Per the proposed amendment: <p><i>“If satisfactory documentation is provided that shows that there are no industrial facilities [or transportation thoroughfares] or activities related to plastic pellets within the jurisdiction, the responsible jurisdiction may</i></p>	<p>Under the Industrial / Commercial Facilities Program of the LA County MS4 Permit, Permittees must maintain a watershed-based inventory or database of all industrial and commercial facilities within its jurisdiction that are critical sources of storm water pollution. This inventory of critical sources must be updated annually.</p> <p>With respect to plastic pellet requirements, Permittees may provide documentation and results of searches performed on its inventory of critical sources to demonstrate that there are no industrial facilities or activities related to plastic pellets within the jurisdiction.</p> <p>The Standard Industry Classification (SIC) codes</p>

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		<p><i>be excused of the requirement to monitor MS4 outfalls.”</i></p> <p>It is unclear what criteria a city has to use in order to qualify for this exemption. On a broader scale should this not be the responsibility of the plastic pellet handlers and transporters?</p>	<p>associated with industrial activities involving plastic pellets may include, but are not limited to 282X, 305X, 308X, 39XX, 25XX, 3261, 3357, 373X, and 2893. Additionally, industrial facilities with the term “plastic” in the facility or operator name, regardless of the SIC code, may be subject to the provisions of California Water Code section 13367 and section 122.26(b)(12) of Title 40 of the Code of Federal Regulations. Other industrial permittees within the Los Angeles River Watershed that fall within the above categories, but are regulated through other general permits and/or individual industrial storm water permits may also be required to control plastic pellets.</p> <p>MS4 Permittees are required to establish and maintain adequate legal authority to control pollutant discharges into and from its MS4; implement an illicit connections and illicit discharges elimination program, including an illicit discharge and spill response plan; and implement a monitoring and reporting program that, among other objectives, characterizes pollutant loads in MS4 discharges and assesses compliance with receiving water limitations.</p> <p>Comments on the TMDL, or revisions thereto, are outside the scope of the Los Angeles Water Board’s consideration of the proposed amendment.</p>
3.3	City of South Pasadena	<ul style="list-style-type: none"> Thirdly, it is clear that a TMRP (trash monitoring and reporting program) applies only non-point sites, none of which are in South 	<p>Under the proposed amendment, Permittees assigned waste load allocations in the TMDLs are appropriately required to conduct receiving water monitoring. This is consistent with the revised TMDLs. Comments on the</p>

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		<p>Pasadena, with assigned Load Allocations (Table 7-2.4.). However there is a requirement that a TMRP be development [sic] for receiving waters following the Surface Water Ambient Monitoring Program's Rapid Trash Assessment. This is more appropriate to sites with Load Allocations (LA) and it should be clarified that permittees with only WLAs are not required to prepare or conduct any of the Receiving Waters monitoring as specified in this Amendment.</p>	<p>revisions to the TMDLs are outside the scope of the Los Angeles Water Board's consideration of the proposed amendment.</p> <p>The SWAMP rapid trash assessment protocol was cited in the TMDL as an option to fulfill the receiving water monitoring requirement since it is a reasonably quick method for generating reliable data, and is the currently accepted method for trash assessment in surface waters throughout the State. However, Permittees are not limited to this method and may propose alternate protocol for receiving water monitoring.</p>
3.4	City of South Pasadena	<p>In closing, although South Pasadena routinely achieves trash reduction levels in the 97 and 98 percentile range, establishing compliance targets at this level is far too high and does not take into account the natural variations in rainfall and fluctuations in trash and litter discharges. The levels should be lowered to 90 to 95 percent.</p>	<p>Proposals to modify the practical calculation limits established in the TMDL using the mass balance daily generation rate approach are outside the scope of the Los Angeles Water Board's consideration of the proposed amendment.</p>