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ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

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January 21, 2015

**VIA E-MAIL**

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100



E-Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: Comments to A-2236(a)-(kk) & the City of Signal Hill's Petition for Review

Dear Chair Marcus and Members of the Board:

These comments are submitted on behalf of the City of Signal Hill ("City") and its Petition for Review, A-2236(ii), regarding the State Board's Draft Order In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4.

**I. Comments Specific to the City of Signal Hill's Petition**

In 2006, the City timely submitted a ROWD/NPDES Permit Application to the Regional Water Quality Control Board for the Los Angeles Region (the "Regional Board") to be issued an individual permit separate from the Los Angeles County Permit. The Regional Board refused to grant the City's request and instead permitted the City under the system-wide Los Angeles County Permit (except the City of Long Beach).

In its Petition, the City requested that the State Board issue it a separate permit or, in the alternative, remand the Permit to the Regional Board with direction to issue a separate permit to the City. In its Draft Order, the State Board denies the City's request and upholds the Regional Board's decision. The City hereby argues the State Board must reverse its decision in the Final Order for several reasons.

*First, the Regional Board's refusal to grant the City's individual permit request is in violation of Federal law and contradicts the U.S. EPA's and the Regional Board's previous positions on this issue.* The City argued in its Petition, "under the plain language of 40 CFR section 122.26(a)(3)(iii), an MS4 discharger has the express ability to either submit a permit

application in conjunction with other MS4 operators, or alternatively, to submit a ‘distinct permit application which only covers discharges from the’ MS4 system in question.” (Petition, p. 7, lines 24-27.) The text of this regulation clearly demonstrates that the City had the authority to submit an individual permit application and the right to be granted an individual permit. The Draft Order responds to this argument by stating that “the choice of an application does not necessarily dictate the type of permit that the permitting authority ultimately deems appropriate.” (Draft Order, pp. 69-70.) If that were the case, then why is the MS4 operator given the option to submit a distinct permit application? The reasoning in the Draft Order is inconsistent with a plain reading of 40 C.F.R. § 122.26(a)(3)(iii) – the permittee must be given control over the permit it is requesting and ultimately the permit it is granted.

Furthermore, the City’s Petition points out that in its 1990 response to comments for regulations to large and medium MS4s, the U.S. EPA noted that the system-wide approach required the permit-issuing entity to tailor individual programs for each permittee, and recognized the right of an MS4 permittee to apply for and obtain its own individual permit:

In some cases, it may be undesirable for all municipal entities with storm water responsibility within a municipal system to be co-permittees under one system-wide permit. The permit application requirements in today’s rule allow individual municipal entities within the system to submit permit applications and obtain a permit for that portion of the storm sewer system for which they are responsible. Thus, several permits may be issued to cover various subdivisions of a single municipal system.

(55 Fed. Reg. 47990-48043.)

The Draft Order offers no response to this argument.

Also, in recent litigation the Regional Board has recognized the right of any individual MS4 operator to apply for and obtain its own individual permit. In its *amicus curiae* brief filed in *Santa Monica Baykeeper v. City of Malibu* (U.S. District Court, Central District of California Case No. CV 08-1465-AHM) the Regional Board provided the following explanation:

Finally, should any permittee determine that it no longer wishes to be permitted under a system-wide regime, it has multiple opportunities to seek to have the permit modified or opt out of the permit. Permits issued on a jurisdiction-wide, system-wide watershed or other basis may specify different conditions relating to different discharges. So, if a permittee is unable or unwilling to cooperate with adjacent jurisdictions within the structures created by the Permit, it could ask for particular situations/discharges to have their own conditions imposed. It may also seek its own permit with permit terms that are specific to its own MS4. Or, conceivable, the MS4 operator who neither desires

to work with other operators on a system-wide basis, nor wants responsibility for its own permit, could be denied a permit entirely.

(*Id.* [internal citations omitted].)

Here, the Regional Board is taking a completely opposite position in violation of the principles of *res judicata*. The City sought its own permit and the Regional Board did not entertain that request. Again, the Draft Order offers no explanation to resolve this inconsistency.

***Second, the Regional Board failed to provide an adequate explanation for its decision to deny the City an individual permit, making its decision arbitrary and capricious.*** The City specifically argued that the Regional Board failed to meet its duty to “set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 811 Cal.3d 506, 515.) The City’s Petition explains that the Permit Fact Sheet (Attachment F) cites several factors that the Regional Board considered in evaluating the City’s individual permit request. The City then explains why each argument cited by the Regional Board is irrelevant, unsupported, and unconvincing.

The State Board responds to these arguments by stating that the Regional Board’s “decision regarding Signal Hill was appropriately supported by findings in the Order and in the Fact Sheet.” (Draft Order, p. 70.) The State Board relies on 40 C.F.R. § 122.26(a)(1)(v), which states, in relevant part:

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

- (A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.
- (B) The size of the discharge;
- (C) The quantity and nature of the pollutants discharged to waters of the United States; and
- (D) Other relevant factors.

However, the Regional Board did not rely on these factors as required by law, and the alleged “factors” it did rely on are not relevant in any way. Instead, the Regional Board offered weak explanations that the City easily contradicted in its Petition. For these reasons, the Regional Board failed to “bridge the analytic gap” between the evidence for it and its ultimate decision, thereby violating State law. (*See, Topanga, supra*, 811 Cal.3d at 515.)

The main rationale for denying the City's request for an individual permit is found on pages 70-71 of the Order: "The Los Angeles Water Board found a system-wide permit to be appropriate for a number of reasons, including that the Permittees' MS4s comprise a large interconnected system with frequently commingled discharges, that the TMDLs to be implemented apply to the jurisdictional areas of multiple Permittees, that the passage of Assembly Bill 2554 in 2010 provide a potential means for funding collaborative water quality improvement plan among Permittees, and that the results of an online survey conducted by the Los Angeles Water Board staff showed that the majority of Permittees favored either a single MS4 permit for Los Angeles County or several watershed-based permits."

It should be noted that both Long Beach and Signal Hill are at the end of the regional system. Also, Signal Hill is completely surrounded on all four sides of its community by the City of Long Beach. It should be further noted that the City of Signal Hill storm drains connect directly to the City of Long Beach system, and its storm drains are not a part of a large interconnected regional system with frequently commingled discharges. There are discrete storm drain connections, where water volumes and quality can be measured when passing into Long Beach. There is a better argument that one permit could be issued combining Long Beach and Signal Hill. However, this permit decision rightfully belongs to the individual cities and not to the Regional Board.

It should also be noted that participation in the TMDLs is not precluded by holding an individual permit. Both the Ports of Los Angeles and Long Beach participate in local TMDLs, yet they are not a party to the greater Los Angeles MS4 permit. Cities can and do act in the best interests of the watershed, without being forced into a regional permit. For example, Signal Hill took the lead in organizing the cities in the Los Cerritos Channel Metals TMDL in 2009, in anticipation of the adoption of this TMDL by U.S. EPA, since the City believes it is important to voluntarily collaborate with the surrounding cities and permit holders. The City of Long Beach, which holds its own permit, also voluntarily participates in these watershed groups.

We believe that it is also important to point out the County's "Clean Water, Clean Beaches" regional funding measure was tabled by the Board of Supervisors in March of 2012. The measure was based on AB 2554, which authorized the Los Angeles County Flood Control District to pursue a stormwater fee. It should also be noted that Long Beach was included in the County's fee effort, even though they were issued an individual MS4 permit. The fee measure did not distinguish between whether a city held a regional or individual MS4 permit. We find this argument discriminating against Signal Hill's right to an individual permit especially unconvincing.

As equally unconvincing is the argument that the majority of cities in an on-line survey preferred the system-wide MS4 permit or a watershed based permit. We can find no citation in the Clean Water Act or in the federal regulations that relegate the decision by Signal Hill or any other community to accede to an opinion poll on the status of their permit. If opinion polls ruled

the Regional Board's decision process, the City seriously doubts that other cities would take issue with the City having an individual stormwater permit.

Signal Hill has a progressive stormwater program and devotes substantial staff and financial resources to implement the permit requirements. It should be noted that Signal Hill files annual reports to the Regional Board on the progress of its programs. The City's programs go above and beyond what many cities are doing, including the City of Long Beach. Signal Hill is one of the few communities in its region to have adopted a separate funding source, relying on a Proposition 218 protest hearing, to implement the Los Angeles River Trash TMDL.

As stated in the City's Petition, the City respectfully requests the State Board modify the Permit by removing the City from the Permit and direct the Regional Board to issue the City an individual permit.

## **II. Comments In Support of Other Permittees' Petitions**

In addition to the above comments directly-related to the City's Petition, the City also supports the comments submitted in support of several other Permittee's Petitions for Review. Specifically, the City supports the proposed revisions to the Permit being submitted by the Cities of Duarte and Huntington Park. The remainder of this letter provides a summary of those comments.

As presented on behalf of the Cities of Duarte and Huntington Park (and other cities) at the Workshop on December 16, 2014, the Cities are generally supportive, *in concept*, of the provisions within the Draft Order endorsing the Watershed Management Program ("WMP") and Enhanced Watershed Management Program ("EWMP"), along with the Adaptive Management Process described in the Draft Order, but strongly object to the continued reliance on the use of numeric water quality-based effluent limits or other numeric limits (collectively, "numeric effluent limits") as legal compliance requirements to be achieved with the WMP/EWMP program.

The inclusion of numeric effluent limits in a municipal separate storm sewer system ("MS4") NPDES permit is not required under federal law, and therefore can only be imposed under the California Porter-Cologne Act when the factors set forth in California Water Code ("CWC") sections 13241, 13263 and 13000 have first been fully considered, and the Permit findings and terms have been developed consistent with these factors. Here, substantial evidence clearly does not exist to justify the inclusion of numeric effluent limits in light of the requirements under the Porter-Cologne Act. The Draft Order is thus legally deficient, as is the Subject Permit, in light of the lack of finding and determinations showing that the Permit terms were developed in accordance with the factors and considerations required by State law.

For the following reasons, as elaborated on further below and in the Cities' Briefs in support of their Petition for Review, as written the Draft Order and the subject Permit are contrary to law:

1) The inclusion of strict numeric effluent limits within the Permit (including as a measure of WMP and EWMP legal compliance) were not developed in accordance with the express requirements of State Law, namely CWC sections 13000, 13263, and 13241. The Draft Order is similarly defective because it fails to correct this significant legal defect. The WMP/EWMP process should therefore be revised to allow for deemed compliance through a BMP-based WMP/EWMP adaptive management process. (Proposed revisions to the relevant Permit terms to effectuate this approach are included herewith as **Exhibit "A"** – Cities WMP/EWMP Alternative Approach. Note that the attached is not intended to address any of the other defects in the Permit discussed here or otherwise.)

2) The numeric effluent limits in the Permit are, in many cases, impossible to comply with, and therefore are contrary to law. The Draft Order fails to address this legal defect with the Permit.

3) The provisions within the Draft Order involving the "Non-Storm Water" "Discharge Prohibition" is inconsistent with federal law and contrary to State law because the maximum extent practicable ("MEP") standard under the CWA applies to discharges of both "non-storm water" and "storm water" from the MS4.

4) The Permit Monitoring and Reporting Program requirements have not been substantively revised with the Draft Order, and thus remain contrary to law because they were not developed in accordance with the requirements of CWC sections 13267, 13225 and 13165.

5) Both the Permit terms and as terms of the Draft Order, requiring a Permittee involved in a co-mingled discharge, to prove it did not cause or contribute to an alleged exceedance, violate basic tenants of due process of law.

6) The legal arguments in the Draft Order notwithstanding, the fact that the same attorneys advised both the Regional Board Staff and the Board itself, prior to and during the adjudicative hearing on the adoption of the Permit, has resulted in a violation of the Permittees' procedural rights to due process of law.

7) Without any substantive analysis, the Draft Order improperly dismisses the Cities' remaining objections as "not raising substantial issues appropriate for State Water Board review." The Draft Order thus does not address the preemption problems created by the inconsistency between the California Environmental Quality Act ("CEQA") requirements, and the Planning And Land Development Program Permit requirements, including the new Low

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Impact Development (“LID”) and Hydro-modification requirements in the Permit. These Permit terms, therefore, remain contrary to law.

As explained herein, the Cities respectfully request that the numeric effluent limits in the Permit, which are currently imposed as strict compliance requirements, be omitted, and that the Draft Order and Permit be revised to instead include a WMP/EWMP process, whereby compliance may be achieved through the implementation of best management practices (“BMPs”), and adherence to the adaptive management process. Numeric effluent limits should only be used as goals or targets to measure BMP effectiveness, but not as legally enforceable requirements. Consistent with this approach, the Cities are hereby providing a markup of the relevant WMP/EWMP provisions of the Subject Permit – “Cities WMP/EWMP Alternative Approach” (included as **Exhibit “A”**). This WMP/EWMP Alternative Approach requires the development of BMPs that are consistent with the MEP standard, and using numeric effluent limits as goals rather than as strict legal requirements.

The City appreciates the State Board’s consideration of these comments and strongly urges the State Board to revise its Final Order accordingly.

Sincerely,

ALESHIRE & WYNDER, LLP



Patricia J. Quilizapa  
Miles P. Hogan  
Attorneys for the City of Signal Hill

Encl.

cc: Kenneth C. Farfsing  
City Manager, City of Signal Hill  
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# **Exhibit “A”**



**CITIES WMP/EWMP  
ALTERNATIVE APPROACH**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**LOS ANGELES REGION**

320 W. 4th Street, Suite 200, Los Angeles, California 90013

Phone (213) 576 - 6600 Fax (213) 576 - 6640

<http://www.waterboards.ca.gov/losangeles>

**ORDER NO. R4-2012-0175**  
**NPDES PERMIT NO. CAS004001**

**WASTE DISCHARGE REQUIREMENTS  
FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES  
WITHIN THE  
COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE  
DISCHARGES  
ORIGINATING FROM THE CITY OF LONG BEACH MS4**

The municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (hereinafter referred to separately as Permittees and jointly as the Dischargers) from the discharge points identified below are subject to waste discharge requirements as set forth in this Order.

**I. FACILITY INFORMATION**

**Table 1. Discharger Information**

Dischargers	The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach (See Table 4)	
Name of Facility	Municipal Separate Storm Sewer Systems (MS4s) within the coastal watersheds of Los Angeles County with the exception of the City of Long Beach MS4	
Facility Address	Various (see Table 2)	
The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) have classified the Greater Los Angeles County MS4 as a large municipal separate storm sewer system (MS4) pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2.		

**Table 2. Facility Information**

Permittee (WDID)	Contact Information	
Agoura Hills (4B190147001)	Mailing Address	30001 Ladyface Court Agoura Hills, CA 91301
	Facility Contact, Title, and E-mail	Ken Berkman, City Engineer kberkman@agoura-hills.ca.us

## C. Watershed Management Programs

### 1. General

- a. The purpose of this Part VI.C is to allow Permittees the flexibility to develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.
- b. Participation in a Watershed Management Program is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A. (Receiving Water Limitations), Part VI.E (Total Maximum Daily Load Provisions) and Attachments L through R, by customizing the control measures in Parts III.A.4 (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures).
- c. Customized strategies, control measures, and BMPs shall be implemented on a watershed basis, where applicable, through each Permittee's storm water management program and/or collectively by all participating Permittees through a Watershed Management Program.
- d. The Watershed Management Programs ~~shall ensure that discharges from the Permittee's MS4-~~ where timely implemented by the Permittee, shall constitute the Permittee being deemed in compliance with: (i) ~~achieve~~ applicable water quality-based effluent limitations in Part VI.E and Attachments L through R, ~~pursuant to the corresponding compliance schedules,~~ (ii) ~~do not cause or contribute to exceedances of~~ (ii) the receiving water limitations in Parts V.A and VI.E and Attachments L through R, and (iii) ~~do not include the~~ non-storm water discharges requirements that are effectively prohibited pursuant to in Part III.A. The programs shall ~~also~~ ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1.
- e. Watershed Management Programs shall be developed either collaboratively or individually using the Regional Water Board's Watershed Management Areas (WMAs). Where appropriate, WMAs may be separated into subwatersheds to focus water quality prioritization and implementation efforts by receiving water.
- f. Each Watershed Management Program shall be consistent with Part VI.C.5-C.8 and shall:
  - i. Prioritize water quality issues resulting from storm water and non-storm water discharges from the MS4 to receiving waters within each WMA,
  - ii. Identify and implement strategies, control measures, and BMPs to achieve the outcomes specified in Part VI.C.1.d,

- iii. Execute an integrated monitoring program and assessment program pursuant to Attachment E – MRP, Part IV to determine progress towards achieving applicable limitations and/or action levels in Attachment G, and
  - iv. Modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the MRP to ensure that applicable water quality-based effluent limitations and receiving water limitations and other milestones set forth in the Watershed Management Program are sought to be achieved to the maximum extent practicable. ~~in the required timeframes.~~
  - v. Provide appropriate opportunity for meaningful stakeholder input, including but not limited to, a permit-wide watershed management program technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval. The composition of the TAC may include at least one Permittee representative from each Watershed Management Area for which a Watershed Management Program will be developed, and must include a minimum of one public representative from a non-governmental organization with public membership, and staff from the Regional Water Board and USEPA Region IX.
- g. Permittees may elect to develop an enhanced Watershed Management Program (EWMP). An EWMP is one that comprehensively evaluates opportunities, within the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects that, wherever feasible, retain (i) all non-storm water runoff and (ii) all storm water runoff from the 85th 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. In drainage areas within the EWMP area where retention of the 85th percentile, 24-hour storm event is not feasible, the EWMP shall include a ~~Reasonable Assurance Analysis to demonstrate~~ demonstration that applicable water quality based effluent limitations and receiving water limitations ~~shall be achieved~~ will be addressed to the maximum extent practicable through implementation of other watershed control measures. An EWMP shall:
- i. Be consistent with the provisions in Part VI.C.1.a.-f and VI.C.5-C.8;
  - ii. Incorporate applicable State agency input on priority setting and other key implementation issues;
  - iii. Provide for ~~meeting~~ measures to address water quality standards and other CWA obligations to the maximum extent practicable by utilizing provisions in the CWA and its implementing regulations, policies and guidance;
  - iv. Include multi-benefit regional projects to ensure that MS4 discharges ~~achieve~~ are being addressed to the maximum extent practicable with the

goal of achieving compliance with all final WQBELs set forth in Part VI.E., and that the discharges do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations in Part V.A., by retaining through infiltration or capture and reuse the storm water volume from the 85th percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.;

- v. In drainage areas where retention of the storm water volume from the 85<sup>th</sup> percentile, 24-hour event is not technically feasible, include other watershed control measures to ensure that MS4 discharges achieve compliance with all interim and final WQBELs set forth in Part VI.E. ~~with compliance deadlines occurring after approval of a EWMP~~ to the maximum extent practicable, and to ensure that MS4 discharges also to the maximum extent practicable, do not cause or contribute to exceedances of receiving water limitations in Part V.A.;
- vi. Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance;
- vii. Incorporate effective innovative technologies, approaches and practices, including green infrastructure;
- viii. Ensure that existing requirements to comply with technology-based effluent limitations and core requirements (e.g., including elimination of nonstorm water discharges of pollutants through the MS4, and controls to reduce the discharge of pollutants in storm water to the maximum extent practicable) are not delayed;
- ix. Ensure that a financial strategy is in place.

## **2. Compliance with Receiving Water Limitations Not Otherwise Addressed by a TMDL through a WMP or EWMP**

- a. For receiving water limitations in Part V.A. associated with water body-pollutant combinations not addressed through a TMDL, but which a Permittee elects to address through a Watershed Management Program or EWMP as set forth in this Part VI.C., a Permittee shall comply as follows:
  - i. **For pollutants that are in the same class<sup>121</sup> as those addressed in a TMDL for the watershed and for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

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<sup>1</sup> Pollutants are considered in a similar class if they have similar fate and transport mechanisms, can be addressed via the same types of control measures, and within the same timeline already contemplated as part of the Watershed Management Program for the TMDL.

- (1) Permittees shall demonstrate that the Watershed Control Measures to ~~achieve~~ address the applicable TMDL provisions identified pursuant to Part VI.C.5.b.iv.(3) to the maximum extent practicable, will also adequately address contributions of the pollutant(s) within the same class from MS4 discharges to receiving waters, consistent with the assumptions and requirements of the corresponding TMDL provisions, including interim and final requirements and deadlines for their desired achievement, such that the MS4 discharges of the pollutant(s) will, to the maximum extent practicable, not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (2) Permittees shall include the water body-pollutant combination(s) in the ~~Reasonable Assurance~~ Demonstration Analysis in Part VI.C.5.b.iv.(5).
- (3) Permittees shall identify milestones and dates for their achievement consistent with those in the corresponding TMDL.

**ii. For pollutants that are not in the same class as those addressed in a TMDL for the watershed, but for which the water body is identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

- (1) Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.
- (3) Permittees shall include the water body-pollutant in the ~~Reasonable Assurance~~ Demonstration Analysis in Part VI.C.5.b.iv.(5).
- (4) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.

- (5) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
  - (a) For an EWMP, in drainage areas where retention of (i) all nonstorm water runoff and (ii) all storm water runoff from the 85<sup>th</sup> percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
  - (b) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible and where the Regional Water Board determines that MS4 discharges cause or contribute to the water quality impairment, participating Permittees may initiate development of a stakeholder-proposed TMDL upon approval of the Watershed Management Program or EWMP. For MS4 discharges from these drainage areas to the receiving waters, any extension of this compliance mechanism beyond the term of this Order shall be consistent with the implementation schedule in a TMDL for the waterbody pollutant combination(s) adopted by the Regional Water Board.

**iii. For pollutants for which there are exceedances of receiving water limitations in Part V.A., but for which the water body is not identified as impaired on the State's Clean Water Act Section 303(d) List as of the effective date of this Order:**

- (1) Upon an exceedance of a receiving water limitation, based on data collected pursuant to the MRP and approved IMPs and CIMPs, Permittees shall assess contributions of the pollutant(s) from MS4 discharges to the receiving waters and sources of the pollutant(s) within the drainage area of the MS4 pursuant to Part VI.C.5.a.iii.
- (2) If MS4 discharges are identified as a source of the pollutant(s) that has caused or contributed to, or has the potential to cause or contribute to, the exceedance(s) of receiving water limitations in Part V.A., Permittees shall address contributions of the pollutant(s) from MS4 discharges through modifications to the WMP or EWMP pursuant to Part VI.C.8.a.ii.
  - (a) In a modified WMP or EWMP, Permittees shall identify Watershed Control Measures pursuant to Part VI.C.5.b. that will adequately address contributions of the pollutant(s) from MS4 discharges to receiving waters such that the MS4 discharges of the pollutant(s) will not cause or contribute to exceedances of receiving water limitations in Part V.A.

- (b) Permittees shall modify the ~~Reasonable~~ Demonstration Assurance-Analysis pursuant to Part VI.C.5.b.iv.(5) to address the pollutant(s).
  - (c) Permittees shall identify enforceable requirements and milestones and dates for their achievement to control MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations within a timeframe(s) that is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary. The time between dates shall not exceed one year. Milestones shall relate to a specific water quality endpoint (e.g., x% of the MS4 drainage area is meeting the receiving water limitations) and dates shall relate either to taking a specific action or meeting a milestone.
  - (d) Where the final date(s) in (4) is beyond the term of this Order, the following conditions shall apply:
    - (i) For an EWMP, in drainage areas where retention of (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event will be achieved, each participating Permittee shall continue to target implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges that are a source of pollutants to receiving waters.
    - (ii) For a WMP and in areas of a EWMP where retention of the volume in (a) is technically infeasible, for newly identified exceedances of receiving water limitations, a Permittee may request that the Regional Water Board approve a modification to its WMP or EWMP to include these additional water body-pollutant combinations.
- b. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. of this Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or EWMP.
- c. If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement.



- d. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A. not otherwise addressed by a TMDL, if all the following requirements are met:
  - i. Provides timely notice of its intent to develop a WMP or EWMP,
  - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
  - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
  - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

### **3. Compliance with Receiving Water Limitations Addressed by a TMDL through a WMP or EWMP**

- a. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee's compliance with provisions pertaining to applicable ~~interim~~-water quality based effluent limitations and ~~interim~~-receiving water limitations in Part VI.E. and Attachments L-R for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.
- b. Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with the receiving water limitations provisions in Part V.A., if all the following requirements are met:
  - i. Provides timely notice of its intent to develop a WMP or EWMP,
  - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
  - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
  - iv. Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

- c. Subdivision b. does not apply to receiving water limitations corresponding to final compliance deadlines pursuant to TMDL provisions in Part VI.E. that have passed or will occur prior to approval of a WMP or EWMP.

**4. Process**

- a. Timelines for Implementation
  - i. Implementation of the following requirements shall occur per the schedule specified in Table 9 below:

**Table 9. Watershed Management Program Implementation Requirements**

Part	Provision	Due Date
VI.C.4.b	Notify Regional Water Board of intent to develop Watershed Management Program or enhanced WMP and request submittal date for draft program plan	6 months after Order effective date
VI.C.4.c	For Permittee(s) that elect not to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	1 year after Order effective date
VI.C.4.c	For Permittee(s) that elect to implement the conditions of Part VI.C.4.c.i or c.ii, submit draft plan to Regional Water Board	18 months after Order effective date
VI.C.4.c.iv	For Permittees that elect to collaborate on an enhanced WMP that meets the requirements of Part VI.C.4.c.iv, submit draft plan to Regional Water Board	18 months after Order effective date, provide final work plan for development of enhanced WMP
		30 months after Order effective date, submit draft plan
VI.C.4.c	Comments provided to Permittees by Regional Water Board	4 months after submittal of draft plan
VI.C.4.c	Submit final plan to Regional Water Board 3 months after receipt of Regional Water Board comments on draft plan	

Part	Provision	Due Date
VI.C.4.c	Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board	3 months after submittal of final plan
VI.C.6	Begin implementation of Watershed Management Program or EWMP	Upon approval of final plan
VI.C.8	Comprehensive evaluation of Watershed Management Program or EWMP and submittal of modifications to plan	Every two years from date of approval

- b. Permittees that elect to develop a Watershed Management Program or EWMP must notify the Regional Water Board no later than six months after the effective date of this Order.
- i. Such notification shall specify if the Permittee(s) are requesting a 12-month or 18-month submittal date for the draft Watershed Management Program, per Part VI.C.4.c.i – ii, or if the Permittees are requesting a 18/30-month submittal date for the draft EWMP per Part VI.C.4.c.iv.
  - ii. As part of their notice of intent to develop a WMP or EWMP, Permittees shall identify all applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and the applicable attachment(s) with compliance deadlines occurring prior to approval of a WMP or EWMP. Permittees shall identify watershed control measures, where possible from existing TMDL implementation plans, that will be implemented by participating Permittees concurrently with the development of a Watershed Management Program or EWMP to ensure that MS4 discharges achieve compliance with applicable interim and final trash WQBELs and all other final WQBELs and receiving water limitations set forth in Part VI.E. and the applicable attachment(s) by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.
  - iii. As part of their notification, Permittees electing to develop an EWMP shall submit all of the following in addition to the requirements of Part VI.C.4.b.i.-ii.:
    - (1) Plan concept and geographical scope,
    - (2) Cost estimate for plan development,
    - (3) Executed MOU/agreement among participating Permittees to fund plan development, or final draft MOU among participating Permittees

along with a signed letter of intent from each participating City Manager or head of agency. If a final draft MOU is submitted, the MOU shall be fully executed by all participating Permittees within 12 months of the effective date of this Order.

- (4) Interim milestones for plan development and deadlines for their achievement,
  - (5) Identification of, and commitment to fully implement, one structural BMP or a suite of BMPs at a scale that provides meaningful water quality improvement within each watershed covered by the plan within 30 months of the effective date of this Order in addition to watershed control measures to be implemented pursuant to b.ii. above. The structural BMP or suite of BMPs shall be subject to approval by the Regional Water Board Executive Officer, and
  - (6) Demonstration that the requirements in Parts VI.C.4.c.iv.(1) and (2) have been met.
- c. Permittees that elect to develop a Watershed Management Program shall submit a draft plan to the Regional Water Board as follows:
- i. For Permittees that elect to collaborate on the development of a Watershed Management Program, Permittees shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area covered by the WMP:
    - (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
    - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
    - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.i(1) and (2) have been met in greater than 50% of the watershed area.
  - ii. For a Permittee that elects to develop an individual Watershed Management Program, the Permittee shall submit the draft Watershed Management Program no later than 18 months after the effective date of this Order if the following conditions are met:

- (1) Demonstrate that there is a LID ordinance in place for the Permittee's jurisdiction and/or commence development of a Low Impact Development (LID) ordinance for the Permittee's jurisdiction meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
  - (2) Demonstrate that there is a green streets policy in place for the Permittee's jurisdiction and/or commence development of a policy that specifies the use of green street strategies for transportation corridors within the Permittee's jurisdiction within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
  - (3) Demonstrate in the notification of the intent to develop a Watershed Management Program that Parts VI.C.4.c.ii.(1) and (2) have been met.
- iii. For Permittees that elect not to implement the conditions under Part VI.C.4.c.i. or Part VI.C.4.c.ii., Permittees shall submit the draft Watershed Management Program no later than 12 months after the effective date of this Order.
- iv. For Permittees that elect to collaborate on the development of an EWMP, Permittees shall submit the work plan for development of the EWMP no later than 18 months after the effective date of this Order, and shall submit the draft program no later than 30 months after the effective date of this Order if the following conditions are met in greater than 50% of the land area in the watershed:
- (1) Demonstrate that there are LID ordinances in place and/or commence development of a Low Impact Development (LID) ordinance(s) meeting the requirements of this Order's Planning and Land Development Program within 60 days of the effective date of the Order and have a draft ordinance within 6 months of the effective date of the Order, and
  - (2) Demonstrate that there are green streets policies in place and/or commence development of a policy(ies) that specifies the use of green street strategies for transportation corridors within 60 days of the effective date of the Order and have a draft policy within 6 months of the effective date of the Order.
  - (3) Demonstrate in the notification of the intent to develop an EWMP that Parts VI.C.4.c.iv.(1) and (2) have been met in greater than 50% of the watershed area.

- d. Until the Watershed Management Program or EWMP is approved by the Regional Water Board or by the Executive Officer on behalf of the Regional Water Board, Permittees that elect to develop a Watershed Management Program or EWMP shall:
  - i. Continue to implement watershed control measures in 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),
  - ii. Continue to implement watershed control measures to eliminate non-storm water discharges through the MS4 that are a source of pollutants to receiving waters consistent with CWA section 402(p)(3)(B)(ii), and
  - iii. Implement watershed control measures, where possible from existing TMDL implementation plans, to ensure that MS4 discharges achieve compliance ~~with~~ to the maximum extent practicable, interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E. and set forth in Attachments L through R. ~~by the applicable compliance deadlines occurring prior to approval of a WMP or EWMP.~~
- e. Permittees that do not elect to develop a Watershed Management Program or EWMP, or that do not have an approved WMP or EWMP within 28 or 40 months, respectively, of the effective date of this Order, shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).
- f. Permittees subject to the Middle Santa Ana River Watershed Bacteria Indicator TMDL shall submit a Comprehensive Bacteria Reduction Plan (CBRP) for dry weather to the Regional Water Board Executive Officer no later than nine months after the effective date of this Order. The CBRP shall describe, in detail, the specific actions that have been taken or will be taken to achieve compliance with the dry weather water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Watershed Bacteria Indicator TMDL by December 31, 2015. The CBRP shall also establish a schedule for developing a CBRP to comply with the water quality-based effluent limitations and the receiving water limitations for the Middle Santa Ana River Bacteria TMDL during wet weather by December 31, 2025. The CBRP may be developed in lieu of the Watershed Management Program for MS4 discharges of bacteria within the Middle Santa Ana River Watershed.

## 5. Program Development

- a. Identification of Water Quality Priorities

Permittees shall identify the water quality priorities within each WMA that will be addressed by the Watershed Management Program. At a minimum, these priorities shall include achieving to the maximum extent practicable, applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs, as set forth in Part VI.E and Attachments L through R of this Order.

- i. Water Quality Characterization. Each plan shall include an evaluation of existing water quality conditions, including characterization of storm water and non-storm water discharges from the MS4 and receiving water quality, to support identification and prioritization/sequencing of management actions.
- ii. Water Body-Pollutant Classification. On the basis of the evaluation of existing water quality conditions, water body-pollutant combinations shall be classified into one of the following three categories:
  - (1) Category 1 (Highest Priority): Water body-pollutant combinations for which water quality-based effluent limitations and/or receiving water limitations are established in Part VI.E and Attachments L through R of this Order.
  - (2) Category 2 (High Priority): Pollutants for which data indicate water quality impairment in the receiving water according to the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) and for which MS4 discharges may be causing or contributing to the impairment.
  - (3) Category 3 (Medium Priority): Pollutants for which there are insufficient data to indicate water quality impairment in the receiving water according to the State's Listing Policy, but which exceed applicable receiving water limitations contained in this Order and for which MS4 discharges may be causing or contributing to the exceedance.
- iii. Source Assessment. Utilizing existing information, potential sources within the watershed for the water body-pollutant combinations in Categories 1 – 3 shall be identified.
  - (1) Permittees shall identify known and suspected storm water and non-storm water pollutant sources in discharges to the MS4 and from the MS4 to receiving waters and any other stressors related to MS4 discharges causing or contributing to the water quality priorities. The identification of known and suspected sources of the highest water quality priorities shall consider the following:
    - (a) Review of available data, including but not limited to:

- (i) Findings from the Permittees' Illicit Connections and Illicit Discharge Elimination Programs;
  - (ii) Findings from the Permittees' Industrial/Commercial Facilities Programs;
  - (iii) Findings from the Permittees' Development Construction Programs;
  - (iv) Findings from the Permittees' Public Agency Activities Programs;
  - (v) TMDL source investigations;
  - (vi) Watershed model results;
  - (vii) Findings from the Permittees' monitoring programs, including but not limited to TMDL compliance monitoring and receiving water monitoring; and
  - (viii) Any other pertinent data, information, or studies related to pollutant sources and conditions that contribute to the highest water quality priorities.
  - (b) Locations of the Permittees' MS4s, including, at a minimum, all MS4 major outfalls and major structural controls for storm water and non-storm water that discharge to receiving waters.
  - (c) Other known and suspected sources of pollutants in non-storm water or storm water discharges from the MS4 to receiving waters within the WMA.
- iv. Prioritization. Based on the findings of the source assessment, the issues within each watershed shall be prioritized and sequenced. Watershed priorities shall include at a minimum:
- (1) TMDLs
    - (a) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term, or TMDL compliance deadlines that have already passed and limitations have not been achieved.
    - (b) Controlling pollutants for which there are water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines between September 6, 2012 and October 25, 2017.
  - (2) Other Receiving Water Considerations



- (a) Controlling pollutants for which data indicate impairment or exceedances of receiving water limitations in the receiving water and the findings from the source assessment implicates discharges from the MS4 shall be considered the second highest priority.
- b. Selection of Watershed Control Measures
- i. Permittees shall identify strategies, control measures, and BMPs to implement through their individual storm water management programs, and collectively on a watershed scale, with the goal of creating an efficient program to focus individual and collective resources on watershed priorities.
  - ii. The objectives of the Watershed Control Measures shall include:
    - (1) Prevent or eliminate non-storm water discharges to the MS4 to the maximum extent practicable that are a source of pollutants from the MS4 to receiving waters.
    - (2) Implement pollutant controls necessary to achieve to the maximum extent practicable, all applicable interim and final water quality-based effluent limitations and/or receiving water limitations pursuant to corresponding compliance schedules.
    - (3) Ensure that discharges from the MS4 do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations.
  - iii. Watershed Control Measures may include:
    - (1) Structural and/or non-structural controls and operation and maintenance procedures that are designed to achieve to the maximum extent practicable, applicable water quality-based effluent limitations, receiving water limitations in Part VI.E and/or Attachments L through R;
    - (2) Retrofitting areas of existing development known or suspected to contribute to the highest water quality priorities with regional or subregional controls or management measures; and
    - (3) Stream and/or habitat rehabilitation or restoration projects where stream and/or habitat rehabilitation or restoration are necessary for, or will contribute to demonstrable improvements in the physical, chemical, and biological receiving water conditions and restoration and/or protection of water quality standards in receiving waters.
  - iv. The following provisions of this Order shall be incorporated as part of the Watershed Management Program:

- (1) Minimum Control Measures.
  - (a) Permittees shall assess the minimum control measures (MCMs) as defined in Part VI.D.4 to Part VI.D.10 of this Order to identify opportunities for focusing resources on the high priority issues in each watershed. For each of the following minimum control measures, Permittees shall identify potential modifications that will address watershed priorities:
    - (i) Development Construction Program
    - (ii) Industrial/Commercial Facilities Program
    - (iii) Illicit Connection and Illicit Discharges Detection and Elimination Program
    - (iv) Public Agency Activities Program
    - (v) Public Information and Participation Program
  - (b) At a minimum, the Watershed Management Program shall include management programs consistent with 40 CFR section 122.26(d)(2)(iv)(A)-(D).
  - (c) If the Permittee(s) elects to eliminate a control measure identified in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 because that specific control measure is not applicable to the Permittee(s), the Permittee(s) shall provide a justification for its elimination. The Planning and Land Development Program is not eligible for elimination.
  - (d) Such customized actions, once approved as part of the Watershed Management Program, shall replace in part or in whole the requirements in Parts VI.D.4, VI.D.5, VI.D.6 and VI.D.8 to VI.D.10 for participating Permittees.
- (2) Non-Storm Water Discharge Measures. Where Permittees identify non-storm water discharges from the MS4 as a source of pollutants that cause or contribute to exceedance of receiving water limitations, the Watershed Control Measures shall include strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants, to the maximum extent practicable, consistent with Parts III.A and VI.D.10. These may include measures to prohibit the non-storm water discharge to the MS4, additional BMPs to reduce pollutants in the non-storm water discharge or conveyed by the non-storm water discharge, diversion to a sanitary sewer for treatment, or strategies to require the non-

storm water discharge to be separately regulated under a general NPDES permit.

- (3) TMDL Control Measures. Permittees shall compile control measures that have been identified in TMDLs and corresponding implementation plans. Permittees shall identify those control measures to be modified, if any, to most effectively address TMDL requirements within the watershed. If not sufficiently identified in previous documents, or if implementation plans have not yet been developed (e.g., USEPA established TMDLs), the Permittees shall evaluate and identify control measures to ~~achieve~~ attempt to achieve, to the maximum extent practicable, water quality-based effluent limitations and/or receiving water limitations established in this Order pursuant to these TMDLs.
  - (a) TMDL control measures shall include where necessary control measures to address both storm water and non-storm water discharges from the MS4.
  - (b) TMDL control measures may include baseline or customized activities covered under the general MCM categories in Part VI.D as well as BMPs and other control measures covered under the non-storm water discharge provisions of Part III.A of this Order.
  - (c) The WMP shall include, at a minimum, those actions that will be implemented during the permit term to ~~achieve~~ attempt to achieve, to the maximum extent practicable, interim and/or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines within the permit term.
- (4) Each plan shall include the following components:
  - (a) Identification of specific structural controls and non-structural best management practices, including operational source control and pollution prevention, and any other actions or programs to attempt to achieve, to the maximum extent practicable, all water quality-based effluent limitations and receiving water limitations contained in this Part VI.E and Attachments L through R to which the Permittee(s) is subject;
  - (b) For each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation;
  - (c) For any pollution prevention measures, the nature, scope, and timing of implementation;
  - (d) For each structural control and non-structural best management practice, interim milestones and dates for achievement to ensure

that TMDL compliance deadlines will be met, to the maximum extent practicable; and

- (e) The plan shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures.
- (5) Permittees shall conduct a ~~Reasonable Assurance~~ Demonstration Analysis for each water body-pollutant combination addressed by the Watershed Management Program. A ~~Reasonable Assurance~~ Demonstration Analysis (DA) (RAA) shall be quantitative and performed using a peer-reviewed model in the public domain. Models to be considered for the ~~RAA~~ DA, without exclusion, are the Watershed Management Modeling System (WMMS), Hydrologic Simulation Program-FORTRAN (HSPF), and the Structural BMP Prioritization and Analysis Tool (SBPAT). The ~~RAA~~ DA shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis. Data on performance of watershed control measures needed as model input shall be drawn only from peer-reviewed sources. These data shall be statistically analyzed to determine the best estimate of performance and the confidence limits on that estimate for the pollutants to be evaluated. The objective of the ~~RAA~~ DA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve to the maximum extent practicable, applicable water quality based effluent limitations and do not to the maximum extent practicable, cause or contribute to exceedances of receiving water limitations.
- (a) Permittees shall demonstrate using the ~~RAA~~ DA that the activities and control measures identified in the Watershed Control Measures will achieve to the maximum extent practicable, applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R with compliance deadlines during the permit term.
  - (b) Where the TMDL Provisions in Part VI.E and Attachments L through R do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving to the maximum extent practicable, interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.

- (c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the ~~RAA-DA~~ that the activities and control measures identified in the Watershed Control Measures will achieve applicable receiving water limitations as soon as possible to the maximum extent practicable.
- (6) Permittees shall provide documentation that they have the necessary legal authority to implement the Watershed Control Measures identified in the plan, or that other legal authority exists to compel implementation of the Watershed Control Measures.

c. Compliance Schedules

Permittees shall incorporate compliance schedules in Attachments L through R into the plan and, where necessary develop interim milestones and dates for their achievement. Compliance schedules and interim milestones and dates for their achievement shall be used to measure progress towards addressing the highest water quality priorities and achieving applicable water quality-based effluent limitations and/or receiving water limitations, to the maximum extent practicable.

- i. Schedules must be adequate for measuring progress on a watershed scale once every two years.
- ii. Schedules must be developed for both the strategies, control measures and BMPs implemented by each Permittee within its jurisdiction and for those that will be implemented by multiple Permittees on a watershed scale.
- iii. Schedules shall incorporate the following:
  - (1) Compliance deadlines occurring within the permit term for achieving all applicable interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R of this Order to the maximum extent practicable,
  - (2) Interim milestones and dates for their achievement to the maximum extent practicable, within the permit term, for any applicable final water quality-based effluent limitation and/or receiving water limitation in Part VI.E and Attachments L through R, where deadlines within the permit term are not otherwise specified.
  - (3) For watershed priorities related to addressing exceedances of receiving water limitations in Part V.A and not otherwise addressed by Part VI.E:
    - (a) Milestones based on measureable criteria or indicators, to be achieved in the receiving waters and/or MS4 discharges,

- (a) A schedule with dates for achieving the milestones, and
- (b) A final date for achieving the receiving water limitations as soon as possible, [to the maximum extent practicable](#).
- (c) The milestones and implementation schedule in (a)-(c) fulfill the requirements in Part V.A.3.a to prepare an Integrated Monitoring Compliance Report.

## 6. Watershed Management Program Implementation

Each Permittee shall begin implementing the Watershed Management Program or EWMP immediately upon approval of the plan by the Regional Water Board or the Executive Officer on behalf of the Regional Water Board.

- a. Permittees may request an extension of deadlines for achievement of **interim** milestones established pursuant to Part VI.C.4.c.iii. ~~(3)~~ **only**. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions shall be subject to approval by the Regional Water Board Executive Officer.

## 7. Integrated Watershed Monitoring and Assessment

Permittees in each WMA shall develop an integrated monitoring program as set forth in Part IV of the MRP (Attachment E) or implement a customized monitoring program with the primary objective of allowing for the customization of the outfall monitoring program (Parts VIII and IX) in conjunction with an approved Watershed Management Program or EWMP, as defined below. Each monitoring program shall assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules, and progress toward addressing the water quality priorities for each WMA. The customized monitoring program shall be submitted as part of the Watershed Management Program, or where Permittees elect to develop an EWMP, shall be submitted within 18 months of the effective date of this Order. If pursuing a customized monitoring program, the Permittee(s) shall provide sufficient justification for each element of the program that differs from the monitoring program requirements as set forth in Attachment E. Monitoring programs shall be subject to approval by the Executive Officer following a public comment period. The customized monitoring program shall be designed to address the Primary Objectives detailed in Attachment E, Part II.A and shall include the following program elements:

- Receiving Water Monitoring
- Storm Water Outfall Monitoring
- Non-Storm Water Outfall Monitoring
- New Development/Re-Development Effectiveness Tracking

- Regional Studies

## 8. Adaptive Management Process

### a. Watershed Management Program Adaptive Management Process

- i. Permittees in each WMA shall implement an adaptive management process, every two years from the date of program approval, adapting the Watershed Management Program or EWMP to become more effective, based on, but not limited to a consideration of the following:
  - (1) Progress toward achieving interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R, according to established compliance schedules;
  - (2) Progress toward achieving improved water quality in MS4 discharges and achieving receiving water limitations through implementation of the watershed control measures based on an evaluation of outfall-based monitoring data and receiving water monitoring data;
  - (3) Achievement of interim milestones;
  - (4) Re-evaluation of the water quality priorities identified for the WMA based on more recent water quality data for discharges from the MS4 and the receiving water(s) and a reassessment of sources of pollutants in MS4 discharges;
  - (5) Availability of new information and data from sources other than the Permittees' monitoring program(s) within the WMA that informs the effectiveness of the actions implemented by the Permittees;
  - (6) Regional Water Board recommendations; and
  - (7) Recommendations for modifications to the Watershed Management Program solicited through a public participation process.
- ii. Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, ~~with the exception of those compliance deadlines established in a TMDL~~, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.

- (1) The adaptive management process fulfills the requirements in Part V.A.4 to address continuing exceedances of receiving water limitations.
- iii. Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.



## E. Total Maximum Daily Load Provisions

1. The provisions of this Part VI.E. implement and are consistent with the assumptions and requirements of all waste load allocations (WLAs) established in TMDLs for which some or all of the Permittees in this Order are responsible.
  - a. Part VI.E of this Order includes provisions that are designed to assure that Permittees achieve WLAs and meet other requirements of TMDLs covering receiving waters impacted by the Permittees' MS4 discharges to the maximum extent practicable. TMDL provisions are grouped by WMA (WMA) in Attachments L through R.
  - b. The Permittees subject to each TMDL are identified in Attachment K.
  - c. The Permittees shall comply to the maximum extent practicable, with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL (40 CFR §122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).
  - d. A Permittee may comply with water quality-based effluent limitations and receiving water limitations in Attachments L through R using any lawful means.

## 2. Compliance Determination

### a. General

- i. A Permittee shall demonstrate ~~compliance~~ the effectiveness of the WMP or EWMP at compliance monitoring points established in each TMDL or, if not specified in the TMDL, at locations identified in an approved TMDL monitoring plan or in accordance with an approved integrated monitoring program per Attachment E, Part VI.C.5 (Integrated Watershed Monitoring and Assessment).
- ii. Compliance to the maximum extent practicable, with water quality-based effluent limitations shall be determined as described in Parts VI.E.2.d and VI.E.2.e, or for trash water quality-based effluent limitations as described in Part VI.E.5.b, or as otherwise set forth in TMDL specific provisions in Attachments L through R.
- iii. Pursuant to Part VI.C, a Permittee may, individually or as part of a watershed-based group, develop and submit for approval by the Regional Water Board Executive Officer a Watershed Management Program that addresses all water quality-based effluent limitations and receiving water limitations to the maximum extent practicable, to which the Permittee is subject pursuant to established TMDLs.

## **b. Commingled Discharges**

- i. A number of the TMDLs establish WLAs that are assigned jointly to a group of Permittees whose storm water and/or non-storm water discharges are or may be commingled in the MS4 prior to discharge to the receiving water subject to the TMDL.
- ii. In these cases, pursuant to 40 CFR section 122.26(a)(3)(vi), each Permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.
- iii. Where Permittees have commingled discharges to the receiving water, compliance at the outfall to the receiving water or in the receiving water shall be determined for the group of Permittees as a whole unless an individual Permittee demonstrates that its discharge did not cause or contribute to the exceedance, pursuant to subpart v. below.
- iv. For purposes of compliance determination, each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation(s) at the outfall or receiving water limitation(s) in the target receiving water.
- v. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable water quality-based effluent limitation or receiving water limitation in any of the following ways:
  - (1) Demonstrate that there is no discharge from the Permittee's MS4 into the applicable receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation; or
  - (2) Demonstrate that the discharge from the Permittee's MS4 is controlled to a level that does not exceed the applicable water quality-based effluent limitation; or
  - (3) For exceedances of bacteria receiving water limitations or water quality-based effluent limitations, demonstrate through a source investigation pursuant to protocols established under California Water Code section 13178 or for exceedances of other receiving water limitations or water quality-based effluent limitations, demonstrate using other accepted source identification protocols, that pollutant sources within the jurisdiction of the Permittee or the Permittee's MS4 have not caused or contributed to the exceedance of the Receiving Water Limitation(s).

## **c. Receiving Water Limitations Addressed by a TMDL**

- i. For receiving water limitations in Part V.A. associated with water body-pollutant combinations addressed in a TMDL, Permittees shall [achieve](#) [be](#)

considered in compliance with the receiving water limitations in Part V.A. if they are in compliance with the WMP/EWMP process as outlined in this ~~Part VI.E. and Attachments L through R of this~~ Order.

- ii. A Permittee's full compliance with the applicable TMDL requirement(s), including compliance schedules, of this Part VI.E. and Attachments L through R constitutes compliance with Part V.A. of this Order for the specific pollutant addressed in the TMDL.
- iii. As an alternative means of complying with the TMDL requirements, other than through the WMP/EWMP process, As long as a Permittee will be considered is in compliance with the applicable TMDL requirements if it is in compliance with a time schedule order (TSO) issued by the Regional Water Board pursuant to California Water Code sections 13300 and 13385(j)(3), ~~it is not the Regional Water Board's intention to take an enforcement action for violations of Part V.A. of this Order for the specific pollutant(s) addressed in the TSO.~~

**d. ~~Interim~~ Water Quality-Based Effluent Limitations and Receiving Water Limitations**

- i. A Permittee shall be considered in compliance with an applicable ~~interim~~ water quality-based effluent limitation and ~~interim~~-receiving water limitation for a pollutant associated with a specific TMDL if any of the following is demonstrated:
  - (1) There are no violations of the interim water quality-based effluent limitation for the pollutant associated with a specific TMDL at the Permittee's applicable MS4 outfall(s),<sup>2</sup> including an outfall to the receiving water that collects discharges from multiple Permittees' jurisdictions;
  - (2) There are no exceedances of the applicable receiving water limitation for the pollutant associated with a specific TMDL in the receiving water(s) at, or downstream of, the Permittee's outfall(s);
  - (3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant associated with a specific TMDL; or
  - (4) The Permittee has submitted and is fully implementing an approved Watershed Management Program or EWMP pursuant to Part VI.C.
    - (a) To be considered fully implementing an approved Watershed Management Program or EWMP, a Permittee must be

<sup>2</sup> An outfall may include a manhole or other point of access to the MS4 at the Permittee's jurisdictional boundary.

implementing all actions consistent with the approved program and applicable compliance schedules, including structural BMPs.

- (b) Structural storm water BMPs or systems of BMPs should be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm, where feasible and necessary to achieve applicable WQBELs and receiving water limitations, and maintenance records must be up-to-date and available for inspection by the Regional Water Board.
- (c) A Permittee that does not implement the Watershed Management Program in accordance with the milestones and compliance schedules shall demonstrate compliance with its interim water quality-based effluent limitations and/or receiving water limitations pursuant to Part VI.E.2.d.i.(1)-(3), above.
- (d) Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, a Permittee's full compliance with all of the following requirements shall constitute a Permittee's compliance with provisions pertaining to ~~interim~~ WQBELs with compliance deadlines occurring prior to approval of a WMP or EWMP. This subdivision (d) shall not apply to ~~interim~~ trash WQBELs.
  - (1) Provides timely notice of its intent to develop a WMP or EWMP,
  - (2) Meets all interim and final deadlines for development of a WMP or EWMP,
  - (3) For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants to the maximum extent practicable from MS4 discharges that cause or contribute to the impairment(s) addressed by the TMDL(s), and
  - (4) Receives final approval of its WMP or EWMP within 28 or 40 months, respectively.

~~**e. Final Water Quality-based Effluent Limitations and/or Receiving Water Limitations**~~

- ~~**i. A Permittee shall be deemed in compliance with an applicable final water quality-based effluent limitation and final receiving water limitation for the pollutant(s) associated with a specific TMDL if any of the following is demonstrated:**~~

- ~~(1) There are no violations of the final water quality-based effluent limitation for the specific pollutant at the Permittee's applicable MS4 outfall(s)<sup>3</sup>;~~
- ~~(2) There are no exceedances of applicable receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's outfall(s);~~
- ~~(3) There is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the water quality-based effluent limitation and/or receiving water limitation for the pollutant(s) associated with a specific TMDL; or~~

(5) In drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event is retained for the drainage area tributary to the applicable receiving water. This provision (4) shall not apply to ~~final~~ trash WQBELs.

### 3. USEPA Established TMDLs

TMDLs established by the USEPA, to which Permittees are subject, do not contain an implementation plan adopted pursuant to California Water Code section 13242. However, USEPA has included implementation recommendations as part of these TMDLs. In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will are to be designed to be effective in achieving compliance with USEPA established numeric WLAs to the maximum extent practicable. ~~The Regional Water Board may, at its discretion, revisit this decision within the term of this Order or in a future permit, as more information is developed to support the inclusion of numeric water quality based effluent limitations.~~

- a. Each Permittee shall propose BMPs to achieve the WLAs contained in the applicable USEPA established TMDL(s), and a schedule for implementing the BMPs that is as short as possible, in a Watershed Management Program or EWMP.
- b. Each Permittee may either individually submit a Watershed Management Program, or may jointly submit a WMP or EWMP with other Permittees subject to the WLAs contained in the USEPA established TMDL.
- c. At a minimum, each Permittee shall include the following information in its Watershed Management Program or EWMP, relevant to each applicable USEPA established TMDL:

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<sup>3</sup> ~~Ibid.~~

- i. Available data demonstrating the current quality of the Permittee's MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
- ii. A detailed description of BMPs that have been implemented, and/or are currently being implemented by the Permittee to achieve the WLA(s), if any;
- iii. A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable WLA(s);
- iv. A demonstration that the time schedule requested is as short as possible, taking into account the time since USEPA establishment of the TMDL, and technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the WLA(s) to the maximum extent practicable.;

~~(1) For the Malibu Creek Nutrient TMDL established by USEPA in 2003, in no case shall the time schedule to achieve the final numeric WLAs exceed five years from the effective date of this Order; and~~

- v. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and numeric milestones and the date(s) for their achievement.
- d. Each Permittee subject to a WLA in a TMDL established by USEPA shall submit a draft of a Watershed Management Program or EWMP to the Regional Water Board Executive Officer for approval per the schedule Part VI.C.4. e.
  - e. If a Permittee does not submit a Watershed Management Program, or the plan is determined to be inadequate by the Regional Water Board Executive Officer and the Permittee does not make the necessary revisions within 90 days of written notification that plan is inadequate, the Permittee shall be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the MRP (Attachment E) for this Order.

#### 4. State Adopted TMDLs where Final Compliance Deadlines have Passed

- a. Permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule, but Permittees following the WMP/EWMP process in accordance with Part VI.C shall be considered in compliance with all such WQBELs, receiving water limitations and WLAs.
- b. ~~Where~~ As an alternative to compliance through the WMP/EWMP process, where a Permittee is seeking to comply with such WQBELs, receiving water limitations and WLAs, other than through the WMP/EWMP process, and

believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, ~~a~~the Permittee may within 45 days of Order adoption request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.

- c. Permittees may either individually request a TSO, or may jointly request a TSO with all Permittees subject to the water quality-based effluent limitations and/or receiving water limitations, to implement the WLAs in the state-adopted TMDL.
- d. At a minimum, a request for a time schedule order shall include the following:
  - i. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
  - ii. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
  - iii. Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations;
  - iv. A detailed time schedule of specific actions the Permittee will take in order to attempt to achieve the water quality-based effluent limitations and/or receiving water limitations to the maximum extent practicable;
  - v. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation goals(s); and
  - vi. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements for BMP implementation and the date(s) for their ~~achievement~~performance. The interim requirements shall include both of the following:
    - (1) Effluent limitation(s) goals for the pollutant(s) of concern; and
    - (2) Actions and milestones ~~leading~~ that are to be designed to attempt to meet to compliance with the effluent limitation goals to the maximum extent practicable(s).