

California Regional Water Quality Control Board, Los Angeles Region
Los Angeles County MS4 Permit
Response to Comments on the Tentative Order
RECEIVING WATER LIMITATIONS MATRIX

Section/Topic	Comment Summary	Commenter(s)	Response	Change Made
Regulatory/Legal Authority	The RWL as written is not a federal requirement so it is not necessary to maintain the current language.	LA Permit Group; Bradbury	NPDES permits are intended to support the objective of the federal Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters” (Clean Water Act section 101(a)). Water quality standards, which are the basis for the receiving water limitations (RWLs) in the Order, are the foundation for achieving this objective. To ensure that discharges do not cause or contribute to exceedances of water quality standards, RWLs provisions are included in all NPDES permits issued pursuant to CWA section 402. Further, CWA section 402(p)(3)(B)(iii) provides specific authorization to States to include other provisions the State determines appropriate for the control of pollutants in MS4 discharges. In its Phase I Stormwater Regulations, Final Rule, USEPA elaborated on these requirements, stating that, “permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls” (see 55 Fed. Reg. 47990, 47994 (Nov. 16, 1990)). USEPA reiterated in its Phase II Stormwater Regulations, Final Rule, that MS4 “permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL.” USEPA Region IX has also affirmed the agency’s position that MS4 discharges must meet water quality standards in a series of comment letters on MS4 permits issued by various California regional water boards. California Water Code section 13377 also requires that NPDES permits include limitations necessary to implement water quality	None

			<p>control plans. The State Board has also found it appropriate to require compliance with state water quality standards. (See State Board Order Nos. WQ 91-03, 91-04, 98-01, 99-05, and 2001-15). The inclusion of RWLs is also consistent with the Ninth Circuit Court of Appeal’s ruling in <i>Defenders of Wildlife v. Browner</i> that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards. ((1999) 191 F.3d 1159, 1166.)</p> <p>Both the State Board and Regional Board have previously concluded that discharges from the MS4 contain pollutants that have the reasonable potential to cause or contribute to excursion above water quality standards. As such, RWLs are included in the permit to ensure that individual and collective discharges from the MS4 do not cause or contribute to exceedances of water quality standards necessary to protect the beneficial uses of the receiving waters.</p>	
Regulatory/Legal Authority	The proposed Provision V.A. of the draft tentative order ignores precedential case law and established State Water Board policies that would allow permittees to comply with standards over time through the implementation of increasingly more complex and effective BMPs. The draft tentative order may force permittees into a consistent state of non-compliance. An iterative management approach represents the soundest basis for compliance.	Port of Stockton; Anaheim; Brisbane; Corona; Dana Point; Murrieta; Orange County DPW; City/County Association of Governments of San Mateo County (C/CAG); Santa Rosa; Irvine; Sacramento Stormwater Quality Partnership	The RWLs provisions in Part V.A. of the permit are nearly identical to those adopted by the Board in the 2001 Permit, including both the prohibition on discharges from the MS4 that cause or contribute to violations of receiving water limitations and the iterative process for addressing discharges from the MS4 that have caused or contributed to violations of receiving water limitations. These provisions were included to comply with requirements of a precedential order adopted by the State Water Board (State Water Board Order No. WQ 99-05). The State Water Board issued that order in response to a decision by USEPA rejecting less stringent terms in other MS4 permits. At that time, USEPA disagreed that an MS4 permit could “authorize” exceedances of water quality standards at all, whether a permittee engaged in storm water management programs or not. In addition, the RWLs provisions do not ignore precedential case law or State Board policies. To the contrary, the RWLs provisions in the 2001 permit have been upheld by both a	Revisions made to Part VI.C.

			<p>state court and a federal court. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7; <i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 886.)</p> <p>Additionally, the majority of pollutants of concern from the Permittees' MS4s are addressed by TMDLs. The permit provides that RWL exceedances for pollutants addressed by TMDLs will be addressed per TMDL specific compliance schedules, which are consistent with Board-adopted and fully approved TMDL implementation schedules. These TMDL implementation schedules were developed to accommodate Permittees' efforts to achieve compliance with standards over time.</p> <p>For waterbody-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an</p>	
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			approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.	
Regulatory/Legal Authority	The RWL section is unlawful and an abuse of discretion because it is impossible to comply with. The RWLs section does not recognize the finding by the State Water Board's Blue Ribbon Panel and there is no evidence in the fact sheet that supports a finding that the Permittees can comply with this section.	LACFCD; County of Los Angeles	<p>The Board disagrees. As previously stated in these responses, the RWL provisions are authorized by federal law. Further, the RWL section in this permit is consistent with the RWL section in the 2001 permit. Those RWLs provisions in the 2001 permit have been upheld by both a state court and a federal court. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7; <i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 886.) Permittees have the necessary authority and ability to control discharges of pollutants from their MS4s to implement these provisions. Moreover, the Los Angeles County Superior Court found that “there was no issue of impossibility” in the requirements of the 2001 permit, including the RWLs. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, p. 9.)</p> <p>Further, the commenters have misconstrued the findings of the State Water Board's Blue Ribbon panel. The panel focused on concerns about unpredictability of BMP performance, which might suggest that calculating technology based effluent limitations is not feasible but has no bearing on whether NPDES permits must include provisions that require compliance with water quality standards (expressed as receiving water limitations in a permit). Further, the Blue Ribbon Panel did not discuss the feasibility of numeric effluent limitations for non-storm water discharges.</p>	None

Regulatory/Legal Authority – Consistency	The State Water Board’s blue ribbon panel recognized the difficulty of meeting standards end of pipe and, therefore, did not recommend the adoption of numeric effluent limitations. However, strict interpretation of Provision V.A. is no different than a numeric effluent limitation and suffers from the same logistical and feasibility challenges.	Port of Stockton; County of Los Angeles	<p>The commenter has misconstrued the findings of the State Water Board’s panel. The panel focused on concerns about unpredictability of BMP performance, which might suggest that calculating technology based effluent limitations is not feasible but the panel’s findings have no bearing on whether NPDES permits must include provisions that require compliance with water quality standards (expressed as receiving water limitations) nor do the findings impact the Regional Board’s ability to calculate water quality based effluent limitations on the basis of the prevailing water quality standards and available WLAs.</p> <p>The State Water Board, in Order WQ 2006-0012 (Boeing), has made clear that “infeasibility” refers to “the ability or propriety of establishing” numeric limits, as opposed to the feasibility of compliance. USEPA has also testified before this Board that the feasibility of numeric effluent limitations refers to the ability to calculate the numeric effluent limitations not to the feasibility of compliance with such limitations. The Regional Board concludes that it is feasible to establish numeric WQBELs. While a lack of data may have hampered the development of numeric WQBELs for MS4 discharges in earlier permit terms, in the last decade, 33 TMDLs have been developed for water bodies in Los Angeles County in which WLAs are assigned to MS4 discharges. In each case, part of the development process entailed analyzing pollutant sources and allocating loads using empirical relationships or quantitative models. As a result, it is possible to use these numeric WLAs to derive numeric WQBELs for MS4 discharges. Further, the Blue Ribbon Panel did not discuss the feasibility of numeric effluent limitations for non-storm water discharges.</p>	None
Regulatory/Legal Authority	While local governments recognize the importance of attaining water quality standards, these standards were never intended to	Port of Stockton; National Association of Flood and Stormwater Management	As previously stated, NPDES permits are intended to support the objective of the federal Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” (Clean Water Act section 101(a)). Water quality standards, which are the basis for	None

	<p>apply directly to stormwater. Instead, Congress adopted a standard that municipal stormwater dischargers “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or State determines appropriate for the control of such pollutants” (33 U.S.C. §1342(p)(3)(B)(i)-(iii))</p>	<p>Agencies (NAFSMA)</p>	<p>the receiving water limitations in the Order, are the foundation for achieving this objective. The water quality standards contained in the Basin Plan and other prevailing standards such as those in the California Toxics Rule (CTR) are applicable to all surface waters. Where surface waters are impacted by MS4 discharges, these discharges must be controlled such that they do not cause or contribute to exceedances of in-stream water quality standards. To ensure that discharges do not cause or contribute to exceedances of receiving water limitations, RWL provisions are included in all NPDES permits issued pursuant to CWA section 402. Additionally, the standard adopted by Congress for MS4 discharges consists of <i>three</i> parts: (1) an effective prohibition on non-storm water discharges, (2) controls to reduce the discharge of pollutants to the maximum extent practicable and (3) other provisions as the Administrator or State determines appropriate for the control of such pollutants. In the third part, Congress specifically provided authorization to States to include other provisions the State determines appropriate for the control of pollutants in MS4 discharges. This includes controls to ensure compliance with water quality standards. The State Board has also found it appropriate to include receiving water limitations in MS4 permits (State Board Order Nos. WQ 91-03, 91-04, 98-01, 99-05, and 2001-15). The inclusion of RWLs is also consistent with the Ninth Circuit Court of Appeal’s ruling in <i>Defenders of Wildlife v. Browner</i> that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards. ((1999) 191 F.3d 1159, 1166.) Receiving water limitations are thus included in the permit to ensure that individual and collective discharges from the MS4 do not cause or contribute to exceedances of water quality standards necessary to protect the beneficial uses of the receiving waters.</p>	
Regulatory/Legal Authority	Where receiving waters are not meeting water quality	Port of Stockton	Where receiving waters are not meeting water quality standards due to MS4 discharges and the pollutant(s) is	Revisions made to Part

	<p>standards, the appropriate action is to adopt a Total Maximum Daily Load (TMDL), which specifically recognizes that current water quality standards are not being attained and will be addressed by regulation that supports implementation of an adaptive program over an extended period of time.</p> <p>Requiring immediate compliance with water quality standards for a non-continuous discharge is not required by law and represents bad public policy.</p>		<p>not already addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A. Where MS4 discharges are causing or contributing to exceedances of receiving water limitations, and enhanced storm water and non-storm water controls are available to control the pollutants in the MS4 discharge, it is preferable to directly implement these through the Permittees' storm water management programs rather than go through the administrative process of developing a TMDL first and then implementing these control measures.</p>	VI.C.
Regulatory/Legal Authority	The absence of the iterative process disables a safeguard to protect permittees against	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale,	The order includes the same provision that outlines the iterative process for responding to exceedances of receiving water limitations caused or contributed to by discharges from the MS4 as is included in the 2001 MS4	Revisions made to Part VI.C.

	<p>unjustifiably strict compliance with water quality standards that is a requisite feature in all MS4 permits issued in California. The tentative order circumvents the iterative process by creating an alternative referred to as the adaptive/management process which is only available to those permittees that opt for a watershed management program.</p> <p>The iterative process must be included as required by Water Quality Orders 2001-15 and 2009-0008. Moreover, both the draft Caltrans MS4 permit and the draft Phase II MS4 permit contain references to the iterative process.</p> <p>Regional Board staff should incorporate the iterative process into the tentative order in the findings section and in the RWL section. It should also be referenced again under a revised MEP definition.</p>	<p>Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>permit. This provision follows the language of the State Water Board's precedential decision in Order No. WQO 99-05. See Part V.A.3 of the order, which is the same as Parts 2.3 and 2.4 of the 2001 MS4 permit.</p> <p>Furthermore, TMDLs and the schedules of implementation adopted as part of the TMDLs create an orderly iterative process for achieving compliance with the final WQBELs. This is addressed in Part VI.E. of the tentative order, which provides that a Permittee shall not be considered in violation of this Order for the specific pollutant addressed in the TMDL if it is in compliance with the applicable TMDL requirement(s), including compliance schedules, of Part VI.E. and Attachments L through R.</p> <p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for</p>	
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			<p>their achievement must align with those established in the TMDL implementation schedule. A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.</p>	
<p>Regulatory/Legal Authority Fact Sheet - Rationale for Receiving Water Limitations</p>	<p>The Fact Sheet incorrectly states that the “cause or contribute” language is “in accord with the State Board’s finding in Order WQ 98-01.” In that order, however, the State Board upheld RWL permit language that expressly made compliance with the water quality standards subject to compliance with a BMP-based approach. The RWL language in that Permit, unlike the language proposed for the Order, was truly iterative, expressly stating that Permittees would “not in violation of this provision [prohibiting exceedances of water quality objectives] so long as they are in compliance with” an iterative process that requiring evaluation of a drainage area management plan.</p>	<p>County of Los Angeles</p>	<p>The Board disagrees. The State Board, in Order No. 98-01, concluded that MS4 permits must include provisions to achieve compliance with water quality standards, and further that MS4 permits should be written to clearly identify water quality standards and to clearly require that Permittees shall not cause or contribute to exceedances of such water quality standards. The implementation of BMPs was identified by the State Board as the mechanism by which Permittees would achieve compliance, not as the means of determining compliance. Further, State Board Order No. 98-01 was revised by State Board Order 99-05, and specifically eliminated the language cited by the commenter in response to USEPA objections. Order No. 98-01 was cited along with Order 99-05 because Order No. 99-05 builds on the conclusions of the State Board in Order No. 98-01.</p>	<p>None</p>

Regulatory/Legal Authority Fact Sheet - Rationale for Receiving Water Limitations	The Fact Sheet states that USEPA Region IX, in a “series of comment letters” (the only one cited in the Fact Sheet dates from January 21, 1998), contended that “MS4 discharges must meet water quality standards.” The comment letter in question, however, was sent before the Ninth Circuit’s decision in <i>Defenders of Wildlife</i> . In <i>Defenders</i> , the Ninth Circuit expressly ruled that MS4 dischargers were not required to meet such water quality standards.	County of Los Angeles	The Board’s reference to the comment letters is not impacted by the <i>Defenders</i> case. In that case, the Ninth Circuit Court of Appeals merely confirmed that the Clean Water Act provided the authority to require compliance with state water quality standards. Thus, while the Court did rule that the permitting authority could require less than strict compliance with state water quality standards, the Court also expressly ruled that: “Under [the discretionary provision of CWA § 402(p)(3)(B)(iii)], the EPA has the authority to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants.” (<i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.)	
Regulatory/Legal Authority Fact Sheet - Rationale for Receiving Water Limitations	The Phase II Stormwater Regulations final rule does not cover large and medium MS4s and thus is not authority for the Order.	County of Los Angeles	The Board agrees that the Phase II Stormwater rule does not cover large and medium MS4s. However, the Phase II rule provides additional evidence that USEPA continues to hold its position that MS4 permit conditions must provide for attainment of applicable water quality standards.	None
Regulatory/Legal Authority Fact Sheet - Rationale for Receiving Water Limitations	The Fact Sheet incorrectly asserts that the Order, “consistent with CWA section 402(p)(B)(3)(iii) and 40 CFR section 122.44(d)(1), ... includes a provision stating that discharges from the MS4 that cause or contribute to an exceedance of receiving water limitations are prohibited.” This section of the CWA does not	County of Los Angeles	The RWL provisions are consistent with CWA section 402(p)(3)(B)(iii). This section of 402(p)(B)(3) includes two parts: (1) a requirement to implement control to reduce the discharge of pollutants to the maximum extent practicable (MEP) and, (2) authorization to the permitting agency to include other provisions as it determines appropriate for the control of such pollutants. Furthermore, 40 CFR section 122.44 applies to all NPDES permits and section 122.44(d)(1) requires that NPDES permits include any requirements in addition to or more stringent than technology based standards necessary to achieve water quality standards. In the case of MS4 permits, the applicable technology based standard is the	None

	require such language, but only that pollutants discharged from the MS4 be controlled to the MEP. Also, 40 CFR § 122.44(d)(1) does not apply to MS4 permits.		MEP standard. Further, utilizing the authority provided by CWA section 402(p)(3)(B)(iii), and based on USEPA statements and guidance, the State Board has determined that MS4 permits must include compliance with water quality standards. Accordingly, the provisions contained in 40 CFR section 122.44, subdivision (d), are applicable to MS4 permits.	
Regulatory/Legal Authority-Consistency	The Tentative Order and the 2001 MS4 Permit are both inconsistent with Order 99-05 in that the iterative process is only included in the Receiving Water Limitations part of the permit instead of being included in both the Discharge Prohibition and the Receiving Water Limitations parts of the permit. The Regional Water Board could correct this deficiency by adding iterative process language similar to the language in Part V of the Tentative Order to Part III of the Order.	City of Signal Hill	The commenter is confusing the reference to Discharge Prohibitions in Order 99-05, with the requirement to effectively prohibit non-storm water discharges in CWA section 402(p)(3)(B)(ii). Footnote 3 in Order No. 99-05 makes it clear that the reference to Discharge Prohibitions pertains to discharge prohibitions established in water quality control plans, which are established pursuant to California Water Code section 13243.	None
Regulatory/Legal Authority	RWLs in the adopted MS4 permit must remain as stringent as they are currently in the 2001 MS4 permit. The RWLs comply with the Clean Water Act and have stood the test of administrative, judicial, and enforcement challenges. The Board should decline any	Environmental Groups	The RWL provisions in Part V.A. of the order are nearly identical to those adopted by the Board in the 2001 Permit, including both the prohibition on discharges from the MS4 that cause or contribute to violations of receiving water limitations and the process for addressing discharges from the MS4 that have caused or contributed to violations of receiving water limitations. Consistent with the Board's prior interpretations, which have withstood legal challenges, Part V.A. does not contain a "safe harbor." In this permit, however, the Board has found it appropriate	None

	<p>requests to revise the RWLs to incorporate a “safe harbor” provision. Any weakening in the RWL language would fall below federal minimum requirements and would constitute a violation of the CWA’s anti-backsliding provisions.</p>		<p>to allow permittees to submit a Watershed Management Plan. If a permittee chooses to submit a Watershed Management Plan, RWL exceedances for pollutants addressed by TMDLs will be addressed per TMDL specific compliance schedules, which are consistent with Board-adopted and fully approved TMDL implementation schedules. These TMDL implementation schedules were developed to accommodate Permittees’ efforts to achieve compliance with standards over time. Further, for waterbody-pollutant combinations not addressed by a TMDL, the permit has been revised to allow Permittees to develop and implement a Watershed Management Program to address receiving water limitations not otherwise addressed by a TMDL. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s).</p> <p>It is unclear whether the anti-backsliding provisions apply to receiving water limitations. However, to the extent that the anti-backsliding provisions do apply, the RWLs provisions and the Watershed Management Program do not violate the anti-backsliding provisions. Permittees are still required to comply with water quality standards, although the Board, consistent with federal law, has provided permittees the flexibility on how to demonstrate such compliance. This permit incorporates new provisions implementing 32 TMDLs adopted by the Board and/or USEPA. The purpose of the Watershed Management Program is to provide permittees the flexibility to implement permit requirements in an integrated and collaborative fashion to address water quality priorities, such as TMDLs. This allows permittees to schedule implementation of control measures in consideration of all water quality priorities to achieve compliance with water</p>	
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<p>Compliance/Liability Fact Sheet - Rationale for Receiving Water Limitations</p>	<p>The 9th Circuit, in its decision in <i>NRDC v. County of Los Angeles</i>, disregarded language in the 2001 permit and held that each subsection of Part 2 of the Permit was to be enforced separately. The Court also ignored the statement of former Board Chair and current Board Member Francine Diamond and the sworn written testimony of then-Executive Officer Dennis Dickerson that Part 2.2 was to be read in conjunction with Part 2.3, and that exceedances of water quality standards would not per se subject the Permittees to liability under the Permit and the CWA.</p>	<p>County of Los Angeles; West Hollywood</p>	<p>quality standards as soon as possible..</p> <p>The Board disagrees. The Ninth Circuit’s decision is consistent with the Regional Board’s interpretation of its 2001 permit and with a prior state court decision concerning the 2001 permit. In 2005, well before the Ninth Circuit decision, the Los Angeles Superior Court upheld the RWL provisions in the 2001 permit, stating: “In sum, the Regional Board acted within its authority when it included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor,’ whether or not compliance therewith requires efforts that exceed the ‘MEP’ standard.” (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i> (L.A. Super Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 405, 7.) The Ninth Circuit’s decision in <i>NRDC v. County of Los Angeles</i> in 2011 was thus not a fundamental change in how the RWLs in the 2001 permit has been interpreted. The RWL provisions in Part V.A. of the order are nearly identical to those adopted by the Board in the 2001 Permit.</p> <p>The commenters’ reference to the letter from Francine Diamond, Chair, Los Angeles Water Board dated January 30, 2002 is also misplaced and is not indicative of any change. The Los Angeles Superior Court specifically found that the RWLs provisions in the 2001 permit was consistent with the 2002 Diamond letter and State Board Orders WQ 99-05 and 2001-15 (<i>Id.</i>, p. 6.) The 2002 Diamond letter expressed the then-Chairperson’s intention that the Regional Board would continue to work with permittees in the hope that the new provisions would enable continuous progress toward improved MS4 discharge quality. It also sought to assure dischargers that adoption of the 2001 Permit did not necessarily mean the Regional Board would immediately impose penalties based on strict liability. To this extent, the memo was a statement of intent with respect to how the Regional Board would exercise its enforcement discretion. It did not, however, alter the permit requirements or revoke the Regional Board’s enforcement authority.</p>	<p>None</p>
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<p>Compliance/Liability</p>	<p>Recent court decisions have created a new interpretation of the RWL.</p> <p>The draft language exposes the municipalities to enforcement action (and third party law suits) even when the municipality is engaged in an adaptive management approach to address the exceedance.</p>	<p>LA Permit Group; County of Los Angeles; Bradbury; Downey; El Segundo; Inglewood; Malibu; Monterey Park; Peninsula Cities; Torrance; Ventura Countywide Stormwater Quality Management Program; Santa Monica; Signal Hill; Agoura Hills; Artesia; Beverly Hills; Hidden Hills; La Mirada; Monrovia; Norwalk, Rancho Palos Verdes, San Marino, South El Monte, Westlake Village, and West Hollywood</p>	<p>As noted immediately above, the recent decision in <i>NRDC v. County of Los Angeles</i> did not create a new interpretation of the RWLs. Rather, the Ninth Circuit’s decision merely confirmed what the Los Angeles Superior Court decided in 2005.</p> <p>The above notwithstanding, the majority of pollutants of concern from the Los Angeles County MS4 are addressed by TMDLs. The order provides that RWL exceedances for pollutants addressed by TMDLs will be addressed per TMDL specific compliance schedules, which are consistent with Board-adopted and fully approved TMDL implementation schedules. These TMDL implementation schedules were developed to accommodate an adaptive management approach.</p> <p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p>	<p>Revisions made to Part VI.C. to address water body-pollutant combinations not otherwise addressed by a TMDL.</p>
<p>Compliance/Liability</p>	<p>The RWL section creates inordinate legal liability for Permittees due to third party lawsuits. The Permit recognizes this issue with respect to those pollutants addressed by TMDLs. There is no reason why a different standard should</p>	<p>LACFCD; County of Los Angeles</p>	<p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water</p>	<p>Revisions made to Part VI.C.</p>

	apply to the pollutants not addressed by TMDLs.		limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.	
Compliance/Liability	Permittees will be exposed to considerable vulnerability, even though municipalities have little control over the sources of pollutants that create the vulnerability.	LA Permit Group; Inglewood; Malibu; West Hollywood	The Board disagrees. The permittees have ultimate authority and responsibility to prohibit, prevent, or otherwise control discharges that enter and exit the portions of the MS4 for which they are owners and/or operators. Even if the permittees do not themselves generate the pollutants entering/exiting their MS4s, the permittees are nevertheless responsible for ensuring that the pollutants do not reach receiving waters through their MS4. As recently stated by the 9 th Circuit Court of Appeals, "the Clean Water Act does not distinguish between those who add and those who convey what is added by others - the Act is indifferent to the originator of water pollution." (<i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 900.) Thus, the Clean Water Act, and this permit, appropriately places responsibility for preventing	None

			or controlling MS4 discharges on the permittees.	
Compliance/Liability Fact Sheet - Rationale for Receiving Water Limitations	The statement that the Board “will work with the MS4 Permittees through the process outlined in Part V.A.3 in this Order” or through the watershed management programs which mirror “the iterative process in Part V.A.3” provides no comfort or assurance to Permittees. Permittees still are faced with a condition requiring strict compliance with water quality standards and which can be enforced in citizens’ suits with the potential for civil penalties, the payment of attorneys’ fees and the award of injunctive relief, relief that might conflict with the requirements of the Order.	County of Los Angeles	For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.	Revisions made to Part VI.C.
Compliance/Liability Fact Sheet - Rationale for Receiving Water	The County is not looking for a “safe harbor,” and the Order’s multiple compliance provisions are	County of Los Angeles	For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address	Revisions made to Part VI.C.

Limitations	fully applicable and subject to enforcement if they are violated or ignored. The County is, however, requesting RWL provisions that do not leave them, and every other Permittee, in potential violation of the Order (and the CWA) the day that the Order is issued.		these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.	
Compliance/Liability Fact Sheet - Rationale for Receiving Water Limitations	While the Fact Sheet states that each of the three provisions in the Permit's RWL language "are independently applicable" (and thus enforceable), this very fact makes the Permit's present RWL language untenable for Permittees. As	County of Los Angeles	As previously stated in these responses, the RWLs section is authorized by federal law. Further, the RWL section in this permit is consistent with the RWL section in the 2001 permit. Those RWLs provisions in the 2001 permit have been upheld by both a state court and a federal court. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i> , No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7; <i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 886.) Permittees have	Revisions made to Part VI.C.

	<p>demonstrated by the NRDC litigation itself, Permittees covered by the Order would have no protection against another citizens' suit (or possible enforcement action by the Board) for exceedances of water quality standards not subject to the TMDLs, exceedances that will occur as a result of the extreme variability and uncontrolled nature of municipal storm and non-stormwater discharges.</p>		<p>the necessary authority and ability to control discharges of pollutants from their MS4s to implement these provisions. Moreover, the Los Angeles County Superior Court found that "there was no issue of impossibility" in the requirements of the 2001 permit, including the RWLs. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, p. 9.)</p> <p>Notwithstanding the above, for receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part</p>	
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			V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.	
Compliance/Liability	Municipalities cannot cause or exceed water quality standards in the basin plan as soon as this Permit is adopted. It is inherently unfair and poor public policy to put cities in non-compliance on day one of the Permit without the opportunity for the cities to develop a plan of action, develop source identification, and implement a plan to address the concern.	LA Permit Group; County of Los Angeles; Burbank; Downey; El Segundo; Inglewood; Malibu; Monterey Park; Peninsula Cities; Temple City; Torrance; SMBBB Detailed; Port of Stockton; Anaheim; Brisbane; Corona; Dana Point; Murrieta; Orange County DPW; City/County Association of Governments of San Mateo County (C/CAG); Santa Rosa; Irvine; National Association of Flood and Stormwater Management Agencies (NAFSMA)	<p>The RWL section in this permit is consistent with the RWL section in the 2001 permit. Therefore, with regards to the RWL in this permit, the Board is not imposing new requirements. Moreover, the Los Angeles County Superior Court found that “there was no issue of impossibility” in the requirements of the 2001 permit, including the RWLs. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, p. 9.)</p> <p>Notwithstanding the above, the majority of pollutants of concern from the Los Angeles County MS4 are addressed by the 33 TMDLs that are included in the order. The order provides that RWL exceedances for pollutants addressed by TMDLs will be addressed per TMDL specific compliance schedules, which are consistent with Board-adopted and fully approved TMDL implementation schedules. Therefore, Permittees will not be in non-compliance on day one of the permit with WQBELs and RWLs for which compliance deadlines occur in the future.</p> <p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control</p>	Revisions made to Part VI.C.

			<p>measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.</p>	
Compliance/Liability	<p>Permittees should be able to achieve compliance with the permit through a BMP-based iterative approach. Board staff previously indicated that it would not create a permit for which permittees would be out of compliance from the very first day the permit goes into effect. This means the permit cannot require immediate strict compliance with water quality standards. Otherwise, the iterative approach is meaningless.</p>	<p>Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village</p>	<p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their</p>	<p>Revisions made to Part VI.C.</p>

			<p>achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program. Permittees that do not elect to develop a Watershed Management Program are required to demonstrate compliance with receiving water limitations pursuant to Part V.A.</p>	
Compliance/Liability	<p>Compliance with water quality standards is an impossible standard for permittees to meet, especially given that thirty-three (33) TMDLs have been incorporated into the Permit. This means that numerous water bodies that currently do not meet water quality standards will be governed by the Permit and permittees will be subject to potential liability immediately.</p>	<p>Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village</p>	<p>The Board disagrees. The RWL section in this permit is consistent with the RWL section in the 2001 permit. The Los Angeles County Superior Court found that "there was no issue of impossibility" in the requirements of the 2001 permit, including the RWLs. (<i>In re L.A. Cnty. Mun. Storm Water Permit Litig.</i>, No. BS 080548, at 4-5, 7 (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, p. 9.)</p> <p>Further, the majority of pollutants of concern from the Permittees' MS4s are addressed by TMDLs. The tentative order provides these pollutants will be addressed per TMDL specific compliance schedules, which are consistent with Board-adopted and fully approved TMDL implementation schedules. These TMDL implementation schedules were developed to accommodate Permittees' efforts to achieve compliance with standards over time. Many of these implementation schedules have provided between 18 to 25 years to achieve compliance with the wasteload allocations assigned to storm water discharges from the MS4. To the extent that Permittees are making progress consistent with interim milestones Permittees will not be subject to immediate liability. Further, where final compliance deadlines have passed, the tentative order allows Permittees to request a time schedule order, where</p>	<p>Revisions made to Part VI.C. to address water body-pollutant combinations not otherwise addressed by a TMDL.</p>

			<p>justified, to provide more time to implement controls necessary to achieve compliance with final requirements.</p> <p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p>	
Compliance/Liability	The tentative order must be revised to enable compliance with TMDLs and other water quality standards through the SQMP/MCMs	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina	<p>Compliance with TMDL related provisions in Part VI.E. and Attachments L through R may be achieved using any lawful means. Where a Permittee demonstrates through a Reasonable Assurance Analysis that its storm water management program is sufficient to achieve the interim and final WQBELs, a Permittee may rely upon it to achieve the TMDL related requirements in the order. Permittees may demonstrate compliance with interim WQBELs in several ways, including through implementation of watershed control measures in an approved Watershed Management Program. To utilize this compliance demonstration pathway, the Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the schedule for implementation of actions through a Watershed Management Program must be consistent with TMDL compliance schedules, or for other</p>	Revisions made to Part VI.C.

			water body-pollutant combinations not addressed by a TMDL the timeframe for addressing MS4 discharges of the pollutant must be as short as possible.	
Compliance/Liability	Alternative approaches are available to address the concerns and maintain the intent of the language in the approach such as the draft language developed by the California Stormwater Quality Association (CASQA); we request that RWQCB utilize this alternative language.	LA Permit Group; County of Los Angeles; Bradbury; Burbank; Downey; El Segundo; Inglewood; La Verne; Malibu; Monterey Park; Peninsula Cities; Sierra Madre; Torrance; Signal Hill; SMBBB Detailed; Port of Stockton; Anaheim; Brisbane; Corona; Dana Point; Murrieta; Orange County DPW; City/County Association of Governments of San Mateo County (C/CAG); Santa Rosa; Irvine; National Association of Flood and Stormwater Management Agencies (NAFSMA); Sacramento Stormwater Quality Partnership; Ventura Countywide Stormwater Quality Management	<p>The RWL provisions are consistent with the State Board precedential language of Order WQ 99-05, which was developed with input from USEPA. This language is the operative language used for MS4 permits in California at this time. The Regional Water Board may re-open the permit in consideration of any State Board action regarding the precedential language of State Board Order No. 99-05.</p> <p>The Board supports greater rigor and specificity in the iterative process. This rigor and specificity is provided in Part VI.E. and Attachments L through R for water body-pollutant combinations addressed by a TMDL. For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for</p>	Revisions made to Part VI.C.

		<p>Program; Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel, West Covina, Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village; West Hollywood</p>	<p>their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p>	
<p>Liability- Pollutant Sources</p>	<p>USEPA's November 12, 2010 memo is clear that an increased reliance on numerical values should be coupled with the "disaggregation" of different storm water sources within permits. The Permit currently aggregates multiple sources of storm water runoff while additionally imposing numeric standards. This will result in a system whereby the innocent will be punished alongside the guilty for numeric standard exceedances. The Board should not allow this inequitable and legally</p>	<p>Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village</p>	<p>The Board disagrees. The permittees have ultimate authority and responsibility to prohibit, prevent, or otherwise control discharges that enter and exit the portions of the MS4 for which they are owners and/or operators, even where the permittees discharge to a common conveyance system and receiving waters. The Regional Board does not expect that any measured numeric exceedance would necessarily constitute a permit violation by a particular Permittee. In determining whether a numeric exceedance constitutes a permit violation by any one Permittee, the Regional Board would consider all the available information, including other sources and the nature of the exceedance and the applicable requirement of the permit. The permit addresses this comment by allowing permittees who may have commingled discharges to establish a plan for determining compliance.</p>	<p>None</p>

	unjustifiable result to occur.			
Liability- Pollutant Sources	Another reason for adopting a BMP-based approach is the fact that new and existing conditionally exempt non-stormwater discharges may also contribute to measured exceedances. This inequitable result means the exempt discharges may nonetheless contribute to permittee liability.	Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village	There are no new categories of conditionally exempt non-storm water discharges in the order. Additionally, non-storm water discharges are only conditionally exempt if they are not a source of pollutants. If a conditionally exempt discharge is a source of pollutants, Permittees are required to address the discharge of pollutants in any one of several ways, pursuant to Part III.A.4.d. of the order. If an authorized or conditionally exempt essential non-storm water discharge (i.e. other NPDES permitted discharge, potable water discharge or fire fighting flow) causes an exceedance of receiving water limitations, the order states that upon such a demonstration by the Permittee, the Permittee would not be found in violation of the applicable receiving water limitation and/or water quality based effluent limitation, pursuant to Part III.A.5.	None
Relationship to WMP	<p>The RWL as written is contradictory to the Watershed Management Program.</p> <p>The RWL section turns upside down prioritization of efforts to reduce stormwater pollution by emphasizing those pollutants of less significance over those of greater significance. The permit should provide that pollutants not covered by TMDLs but whose presence violates RWLs be addressed by the Permittees in conjunction with their watershed management program</p>	LA Permit Group; City of Los Angeles; County of Los Angeles; Bradbury; Downey; La Verne; Monterey Park; LACFCD; County of Los Angeles	For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. The Watershed Management Program must include, at the outset, a reasonable assurance analysis for the water body-pollutant combination(s) addressed by the program that demonstrates that the watershed control measures proposed in the program will be sufficient to control MS4 discharges such that they do not cause or contribute to an exceedance of the applicable receiving water limitation(s). Additionally, the Watershed Management Program must identify enforceable requirements and milestones and dates for their achievement to address the pollutants within a timeframe that is as short as possible. For pollutants that are in a	Revisions made to Part VI.C.

	<p>when one is being developed or exists, and compliance with that watershed management program is compliance with RWLs. By doing so, Permittees can incorporate and prioritize their efforts to address exceedances of non TMDL pollutants with their efforts to address pollutants addressed by TMDLs.</p>		<p>similar class to those already addressed by a TMDL for the water body, the requirements, milestones and dates for their achievement must align with those established in the TMDL implementation schedule. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p>	
<p>Relationship to WMP</p>	<p>The RWL section fails to provide any incentive for innovative programs that might address exceedances of RWLs. The Board should include an incentive to develop new, innovative approaches, particularly those that will result in greater infiltration of stormwater before it reaches the MS4. A paragraph should be added to this section that would provide that a Permittee can be deemed in compliance if it is developing projects that will result in greater infiltration of stormwater in the watersheds where the RWLs are being exceeded.</p>	<p>LACFCD; County of Los Angeles</p>	<p>The tentative order has been revised to provide Permittees with the option to develop an <i>enhanced</i> Watershed Management Program. An <i>enhanced</i> Watershed Management Program is one that comprehensively evaluates opportunities, with the participating Permittees' collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit regional projects to control MS4 discharges of storm water by, wherever feasible, retaining the 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. Where retention of the 85th percentile, 24-hour storm event is not feasible, the <i>enhanced</i> Watershed Management Program shall include a Reasonable Assurance Analysis to demonstrate that applicable water quality based effluent limitations and receiving water limitations shall be achieved through implementation of other watershed control measures. Permittees who elect to participate in such a program will be provided with a longer time period to develop an <i>enhanced</i> Watershed Management Program in recognition of the time necessary to establish partnerships, provide opportunities for meaningful stakeholder involvement and plan regional, multi-benefit projects. However, these programs must ensure that requirements to comply with (1) technology</p>	<p>Revisions made to Part VI.C.</p>

			<p>based standards (i.e. MEP), (2) other core provisions (e.g., elimination of non-storm water discharges of pollutants), and (3) WQBELs and RWL pursuant to TMDL compliance schedules with deadlines occurring prior to final approval of the enhanced WMP are not delayed. Further, Permittees must implement some early actions related to LID in order to be afforded the additional time to develop an enhanced WMP.</p>	
<p>Relationship to WMP</p>	<p>Part V should include the following paragraph: In lieu of preparing an integrated monitoring compliance report set forth in Part V.A.3.a. a Permittee may address discharges from the MS4 that cause or contribute to a violation of receiving water limitations in their watershed management program applicable to the receiving water. The Permittee shall not be considered to be in violation of Part V.A. of this Order if it is in compliance with that watershed management program. Part V should also add the following: If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an</p>	<p>LACFCD; County of Los Angeles</p>	<p>For receiving water limitations for water body-pollutant combinations not addressed by a TMDL, Part VI.C. of the Order has been revised to allow Permittees to develop and implement a Watershed Management Program to address these receiving water limitations. The Watershed Management Program is a proactive and robust framework for identifying and implementing in a timely fashion, control measures for MS4 discharges such that they do not cause or contribute to exceedances of receiving water limitations. A Permittee's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program will constitute compliance with the receiving water limitations in Part V.A. addressed by the program.</p> <p>Permittees that do not elect to develop and implement a WMP, or who fail to fully comply with all the requirements of an approved WMP, are subject to the provisions of Part V.A.</p>	<p>Revisions made to Part VI.C.</p>

	<p>applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts 1 and 2 above, unless it fails to implement the requirements provided in Parts 3 and 4 as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.</p> <p>Alternatively, LACFCD is supportive of the proposed CASQA RWLs language</p>			
<p>Definition of Receiving Water Limitation</p>	<p>The tentative order has altered Receiving Water Limitation (RWL) language causing it to be overbroad and inconsistent with RWL in the current MS4 permit, the Ventura MS4 permit, State Board WQO 99-05, the draft Caltrans MS4 permit, and RWL language recommended by CASQA. Regional Board does not have the legal authority to re-define RWL language to the extent it is proposing.</p>	<p>Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina; County of Los Angeles</p>	<p>The RWL language in the order is consistent with the State Board’s precedential order WQ 99-05 and is nearly identical to the language of the 2001 Permit, which has also been upheld by a state court and a federal court. The change from “Water Quality Standards or water quality objectives” used in the 2001 Permit to “receiving water limitations” in Part V.A. of the order does not represent a substantive change or expansion of the State Water Board’s precedential language, and was made for clarity. The order includes a definition of “receiving water limitation” that clearly identifies a receiving water limitation as any applicable water quality objective or criterion. To avoid any confusion over the different terminology used by USEPA and the State of California for regulatory thresholds for water quality established pursuant to CWA section 303(c), i.e., “water quality</p>	<p>None</p>

			criteria” and “water quality objectives,” respectively, the Regional Board chose to refer to these thresholds collectively as “receiving water limitations.” The commenter misreads the scope of the reference to federal regulations; the reference is to federal regulations <i>that promulgate water quality criteria</i> such as 40 CFR section 131.38 (that promulgated federal water quality criteria for priority pollutants applicable to California). Thus, the receiving water limitations in the order are equivalent to State adopted or federally promulgated water quality standards applicable to the water body, or limitations to implement the applicable water quality standards such as receiving water conditions established through TMDLs. Further, the reference to water quality control plans or policies adopted by the State Water Board is necessary because in some cases the State Board has established water quality objectives through policies rather than water quality control plans.	
Definition of Receiving Water Limitation	The reference to “policies” adopted by the State Board is ambiguous. The State Board adopts water quality objectives and water quality control plans, not policy resolutions. It is not clear what is meant by policies. The reference to “policies” adopted by the State Board should be deleted from the definition.	LACFCD; County of Los Angeles	The reference to water quality control plans or policies adopted by the State Water Board is necessary because in some cases the State Board has established water quality objectives through policies rather than water quality control plans .	None
Definition of Receiving Water Limitation	The definition should not reference “criterion” under federal regulations. A Permittee is only required to comply with water quality standards adopted by the state or federal government that are	LACFCD; County of Los Angeles	Water quality criteria as used in the order refer to the regulatory thresholds for water quality established pursuant to CWA section 303(c). Such criteria, such as those established in the California Toxics Rule (40 CFR section 131.38) are applicable water quality objectives that Permittees must comply with. The commenter may be confusing federally promulgated water quality criteria pursuant to CWA section 303(c) with USEPA	None

	applicable to the particular waterbody. The definition could be construed as referring to criteria with which Permittees are not required to comply. The reference to “criterion” should be deleted from the definition.		recommended water quality criteria pursuant to CWA section 304(a).	
Definition of Receiving Water Limitation	The permit is ambiguous as to what constitutes a receiving water and what constitutes a municipal separate storm sewer. Recommend adding the underlined sentence to the definition of receiving water so that it reads as follows: A “water of the United States” into which waste and/or pollutants are or may be discharged. <u>All waters of the United States for which beneficial uses are designated in the Basin Plan are receiving waters under this Order and not municipal separate storm sewers.</u>	County of Los Angeles	The permit is not ambiguous. Attachment A clearly defines what is considered a receiving water and what is considered a MS4.	None
General	Footnote 22 has a citation that doesn't exist in 40 CFR; please verify the citation and clarify	City of Santa Clarita Detailed	The citation in the footnote is correct – 40 CFR section 122.26(a)(3)(vi).	None
General	Do we need to submit a formal revised plan document or do we document the revisions internally? What about the	City of Santa Monica Detailed	Part V.A.3.a requires submittal of an Integrated Monitoring Compliance Report to the Regional Water Board. The report is described in Attachment E, Part XVIII.A.5, and must include a description of current BMPs and additional BMPs, including modifications to	None

	implementation schedule?		current BMPs that will be implemented to prevent or reduce the discharge of any pollutants that are causing or contributing to the exceedances of receiving water limitations. Reports are due annually.	
General	<p>Thirty days does not provide sufficient time to do the data analysis and determination.</p> <p>For footnote 23, revise to read: “Within 90 days of receipt of analytical results from the sampling date.”</p>	County of Los Angeles; LACFCD	The order will be revised to remove the requirement to report within 30 days. Permittees should report semi-annually consistent with requirements in the revised MRP-Attachment E, Part XIV.M.	Language will be revised.