

California Regional Water Quality Control Board, Los Angeles Region
Los Angeles County MS4 Permit
Response to Comments on the Tentative Order
TOTAL MAXIMUM DAILY LOADS (GENERAL) MATRIX

Section/Topic	Comment Summary	Commenter(s)	Response	Change Made
<i>General</i>				
Incorporation of TMDLs	For MS4 permits, it is not required that TMDLs be incorporated “consistent with the assumptions and requirements” of the TMDL WLAs. An NPDES permit is required to comply with 40 C.F.R. § 122.44(d)(1)(vii)(B) only “when applicable.” MS4 permits are not required to comply with water quality standards. The entirety of 40 C.F.R. § 122.44(d)(1), including § 122.44(d)(1)(vii)(B), is thus not applicable. This result is derived from the plain language of 33 U.S.C. § 1342(p)(3) as well as by the holding in <i>Defenders of Wildlife</i> . Therefore, there is no requirement that WQBELs or TMDL WLAs be include in the MS4 permit. Such WLAs may instead be expressed in the form of BMPs.	County of Los Angeles (Comment 10)	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 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, RWL provisions are included in all NPDES permits issued pursuant to CWA section 402. Further, Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i> ” [Emphasis added.] 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	None

			<p>discharges must meet water quality standards in a series of comment letters on MS4 permits issued by various California regional water boards. (Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737 (addressing small MS4s). USEPA has also set forth in guidance regarding MS4 permits, that such permits must require compliance with applicable TMDLs to meet water quality standards. (See "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Requirements Based on Those WLAs.'" USEPA Office of Water, Nov. 10, 2010.)</p> <p>The Clean Water Act thus provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality and achieve the objective of the Act. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.) 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. Compliance with the WLAs established in TMDLs is necessary to achieve compliance with water quality standards.</p> <p>In recognition of the purpose of the NPDES program in achieving the objective of the Clean Water Act and 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. (See State Water Board Order Nos. WQ 91-03, WQ 98-01, WQ 99-05, and WQ 2001-15.) Accordingly, the provisions contained in 40 CFR section 122.44, subdivision (d), are applicable to MS4 permits.</p>	
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<p>Application of TMDLs to receiving waters as opposed to the MS4.</p>	<p>The Permit and its attachments are ambiguous, with respect to the application of TMDLs to receiving waters as opposed to the MS4. Recommendation Add as a final sentence to Part VI.E.1.a. the following: “The TMDLs apply to the receiving waters identified in Attachments L-R.”</p>	<p>County of Los Angeles (Comment 116)</p>	<p>There is no ambiguity. The TMDLs apply to the water bodies that are the subject of the TMDLs. The WLAs apply to MS4 discharges to the water bodies that are the subject of the TMDLs.</p>	<p>None</p>
<p>General</p>	<p>WLAs should be incorporated using a BMP-based approach that includes an iterative approach to attain the WLAs and provides flexibility to the Permittees to address the complexities of addressing multiple TMDLs within a watershed.</p>	<p>LA Permit Group, Cities of Inglewood and Claremont</p>	<p>The tentative order provides the opportunity for Permittees to demonstrate compliance with interim effluent limitations through a BMP based approach (i.e., development and implementation of a WMP), where Permittees have provided a reasonable assurance through quantitative analysis that the control measures/BMPs to be implemented will achieve the interim effluent limitations in accordance with the schedule provided in the tentative order. The previously adopted TMDL implementation schedules, including the deadlines to achieve interim milestones, support an iterative approach to attaining the final TMDL requirements and allow Permittees the flexibility to address multiple TMDLs within the watershed. These implementation schedules typically range from 18 to 25 years for storm water related requirements. It is premature to consider application of this BMP based compliance demonstration option to the final effluent limitations and final receiving water limitations – most of which have deadlines outside the term of the tentative order. More data is needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality to have the necessary assurance that these BMPs will ultimately achieve the final effluent limitations. The Regional Board will evaluate the effectiveness of this BMP-based compliance determination approach in ensuring that interim effluent limitations for storm water are achieved during this permit term. If this approach is effective, the tentative order has been revised to include a new cause for</p>	<p>New provision in Part VI.A.7.a.</p>

			<p>modification in Part VI.A.7.a. to consider whether it would be appropriate to allow a similar approach for demonstrating compliance with final effluent limitations applicable to storm water. During the term of the tentative order, there are very few final compliance deadlines for effluent limitations applicable to storm water, or receiving water limitations applicable during wet weather conditions. Most deadlines during the term of the tentative order are for <i>interim</i> effluent limitations <i>applicable to storm water</i>, or for <i>final</i> effluent limitations <i>applicable to non-storm water discharges</i> and final dry weather receiving water limitations. For effluent limitations applicable to non-storm water discharges, a BMP-based approach to compliance demonstration is provided in the sense that a Permittee may demonstrate that it has no non-storm water discharge to the receiving water. This may be demonstrated, for example, by providing documentation of the operation and maintenance of a low-flow diversion. This is consistent with the federal Clean Water Act requirement that non-storm water MS4 discharges must be effectively prohibited.</p>	
Incorporation of TMDLs	<p>The proposed method of incorporating TMDL waste load allocations (WLAs) as outlined in the Draft Order does not effectively allow for addressing this phased method of implementing TMDLs; nor does it recognize the time, effort and complexities involved in addressing MS4 discharges; and places municipalities into non-compliance risk.</p>	LA Permit Group	<p>The proposed method of incorporating TMDL WLAs is consistent with the previously adopted TMDL implementations schedules, which explicitly allow for phased implementation over extended periods in recognition of the time, effort and complexities involved in addressing MS4 discharges.</p>	None
Incorporation of TMDLs	<p>The Permit should recognize the articulated goal of many of the TMDLs to be adaptive management documents, using the iterative approach to achieve the goals, and consider</p>	LA Permit Group	<p>The tentative order provides flexibility through the TMDL compliance schedules and the WMPs to select approaches to address the TMDLs using an adaptive management approach.</p>	None

	the challenges of trying to address the non-point nature of stormwater. As such, it is imperative to have flexibility in selecting an approach to address the TMDLs and the time frame by which to implement the approach.			
Incorporation of TMDLs	We would like to thank Board staff for providing the opportunity to submit an implementation schedule and BMPs in context of a Watershed Management Plan to attain EPA TMDL WLAs. The same flexibility is also necessary to address Regional Board adopted TMDLs.	LA Permit Group	<p>The process to develop a program of implementation for WLAs contained in USEPA established TMDLs, as provided for in this permit, mimics that followed by the Regional Board when adopting TMDLs and programs for their implementation through the basin plan amendment process by providing the opportunity for Permittees to evaluate implementation strategies and the time required to carry out these implementation measures and use this as the basis for compliance schedules to achieve the WLAs in the USEPA established TMDLs in the permit.</p> <p>The Regional Board’s decision as to how to express permit conditions for USEPA established TMDLs is based on an analysis of several specific facts and circumstances surrounding these TMDLs and their incorporation into the tentative order. First, unlike Regional Board adopted TMDLs, these TMDLs do not include a program of implementation. Second, since these TMDLs do not include implementation programs, none have undergone a comprehensive evaluation by the Regional Board of implementation strategies or an evaluation of the time required to fully implement control measures to achieve the final WLAs. Third, the majority of these TMDLs were established by the USEPA recently – from 2010 to present – and permittees have had limited time to plan for and implement control measures to be able to achieve immediate compliance with the WLAs. For these reasons, the Regional Board has determined that numeric effluent limitations for these USEPA established TMDLs are infeasible at the present time. The Regional Board may revisit this decision within the</p>	None

			<p>term of the tentative order or in a future permit, as more information is developed to support the inclusion of numeric effluent limitations. However, in the meantime, Permittees are required to implement BMPs that will be effective in ultimately achieving the numeric WLAs.</p> <p>These facts and circumstances surrounding USEPA established TMDLs do not apply to Regional Board adopted TMDLs. This notwithstanding, as previously described, the tentative order allows Permittees to demonstrate compliance with interim effluent limitations derived from Regional Board adopted TMDLs using a BMP-based approach through development and implementation of a WMP.</p>	
Incorporation of TMDLs	<p>The LA Permit Group would submit that the Regional Board staff is making two policy decisions that have massive financial impacts to the region (studies show in the range of billions of dollars) with regards to incorporating TMDLs into a stormwater NPDES Permit:</p> <ul style="list-style-type: none"> • The inclusion of numeric effluent limitations for final TMDL WLAs. • The use of time schedule orders to address Regional Board adopted TMDLs for which the compliance points have passed. 	LA Permit Group	<p>The Regional Board recognizes that implementation measures to achieve TMDL requirements come at a cost to permittees. These costs of compliance have been considered by the Regional Board during the adoption of the TMDLs. In recognition of these implementation costs, the Regional Board has provided implementation schedules to achieve storm water requirements generally ranging from 18 to 25 years. Pursuant to 40 CFR section 122.44(d)(1)(vii)(B), NPDES permits must include requirements consistent with the assumptions and requirements of any available waste load allocations established in TMDLs. However, the manner in which the effluent limitations for final TMDL WLAs are expressed in the tentative order, in and of itself, does not create the financial impact.</p> <p>The provision in the tentative order that allows permittees to request time schedule orders to come into compliance with final effluent limitations for which final compliance deadlines have passed also does not in and of itself create a financial impact. Instead, where a Permittee provides justification for additional time, a time schedule order will ameliorate the impact by providing additional time to implement the control measures necessary to achieve compliance, which will decrease the financial impact by allowing Permittees to spread out the cost of implementation.</p>	None

<p>Numeric limits</p>	<p>The inclusion of numeric limits is not required and results in contradictions and compliance inconsistencies with the rest of the Permit requirements.</p>	<p>LA Permit Group</p>	<p>Water quality based effluent limitations are required for point source discharges that have the reasonable potential to cause or contribute to an excursion of water quality standards and technology based effluent limitations or standards are not sufficient to achieve water quality standards. Where a WLA has been assigned to a discharge in a TMDL, it is concluded that there is reasonable potential for the discharge to cause or contribute to an excursion of water quality standards. Additionally, the Regional Board finds that for waters identified as impaired and for which WLAs have been assigned to MS4 discharges, that technology based effluent limitations or standards, in the form of storm water management programs (SWMPs) required pursuant to 40 CFR section 122.26(d)(2)(iv) have not been sufficient to achieve water quality standards.</p> <p>Further, the inclusion of numeric effluent limitations is authorized by Clean Water Act section 402(p)(3)(B)(iii). This requirement gives USEPA or the State permitting authority discretion to determine what permit conditions are necessary to control pollutants. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166). 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)). Water quality based effluent limitations must be consistent with the assumptions and requirements of available WLAs. WQBELs may be expressed narratively or numerically. USEPA recommends the use of numeric effluent limitations where feasible in MS4 permits in order to clarify permit requirements and improve accountability during the permit term. While BMPs are central to MS4 permits, permit requirements may only rely upon BMP based limitations in lieu of numeric water quality based effluent limitations if: (1) the BMPs are adequate to achieve water quality standards, and (2) numeric effluent</p>	<p>None</p>
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BMPs	<p>Under 40 CFR Section 122.44 (k), the Regional Board may impose BMPs for control of storm water discharges in lieu of numeric effluent limitations when numeric limits are infeasible. It states that best management practices may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. In 2006, the State Board convened Blue Ribbon Panel made recommendations to the State Water Resources Control Board concluding that it was not feasible to incorporate numeric limits into Permits to regulate storm water, and at best, there could be some action level to focus on problematic drainage sheds . Very little has changed in the technology and the feasibility of</p>	<p>LA Permit Group; Port of Stockton; Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>40 CFR section 122.44(k) provides that BMPs may be used as permit requirements in lieu of numeric effluent limitations only when numeric effluent limitations are found to be infeasible. The Regional Board concludes that numeric WQBELs are feasible. 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.</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 also testified before this Board during the hearing on October 4-5, 2012 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.</p>	None

	<p>controlling storm water pollutants since 2006. Regional Board staff commented during the workshop that staff have evaluated data and have determined numeric effluent limitations are now feasible. However, no information refuting the Blue Ribbon Panel report recommendations has been provided that demonstrates how the appropriateness of using strict numeric limits was determined and why these limits are considered feasible now even though historically both EPA and the State have made findings that developing numeric limits was likely to be infeasible.</p>		<p>With regard to the Blue Ribbon Panel Report, the Panel focused on concerns about unpredictability of BMP performance, which might suggest that calculating technology based effluent limitations is not feasible but does not 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 Panel also raised concerns that “effluent limit approaches usually focus only on conventional water quality constituents that may not be solely or at all responsible for the receiving water beneficial use impairments in urban receiving waters.” However, the numeric effluent limitations proposed in the tentative order are derived directly from TMDL WLAs that have been developed to address exceedances of water quality standards that have a direct link to beneficial use impairments.</p> <p>The Panel also stated that, “monitoring for enforcement of numeric effluent limits would also be challenging.” However, the tentative order addresses the challenge of monitoring through a variety of approaches, including representative outfall monitoring (based on subwatersheds and land use), TMDL compliance monitoring per approved compliance monitoring plans, and BMP-based compliance demonstration for interim WQBELs. Finally, it is important to note that the Panel made no conclusions or recommendations with regard to the feasibility of numeric effluent limitations applicable to non-storm water discharges from MS4s, which must be effectively prohibited if they are a source of pollutants.</p>	
BMPs	<p>Given the discretion available to Regional Board staff and the variability among the TMDLs with respect to understanding of the pollutant sources, confidence in the technical analysis, and availability of control measures sufficient to address the pollutant targets, it</p>	LA Permit Group	<p>The Regional Board only has the discretion to rely upon BMPs in lieu of numeric effluent limitations when numeric limits are infeasible and if there is reasonable assurance that the BMPs will achieve the numeric WQBELs and/or water quality standards. In the case of the numeric WQBELs proposed in the tentative order, reasonable assurance has not yet been demonstrated. The tentative order requires that the WMP plans include an analysis to demonstrate that proposed BMPs will achieve final WQBELs, and requires a regular evaluation of</p>	<p>New provision added to causes for modification in Part VI.A.7.a</p>

	is critical to use non-numeric water quality based effluent limitations for final WLAs in this Permit.		<p>the effectiveness of the BMPs to validate the initial analysis. The Regional Board may consider whether it would be appropriate to allow an action based approach for demonstrating compliance with the final WQBELs applicable to storm water prior to final compliance deadlines if the approach is effective in achieving compliance with interim WQBELs (see revisions to Part VI.A.7.a.).</p> <p>The implementation timeframes provided to achieve TMDLs were adopted by the Regional Board in consideration of the time necessary to further identify sources and identify and implement the most effective control measures. Additionally, the storm water program has advanced significantly nationally and regionally and, for most if not all pollutants addressed by TMDLs, there are well understood control measures available, including structural BMPs to reduce the amount of storm water runoff and treat pollutants in runoff, operational source control, and pollution prevention (also referred to as true source control).</p>	
Incorporation of TMDLs	However, unless final WLAs are also expressed in this Permit as action-based water quality based effluent limitations, and if instead strict numeric limits are required for final WLAs, then, at the specified final compliance date, no matter how much the Permittee has done, no matter how much money has been spent, no matter how close to complying with the numeric values, no matter what other sources outside the Permittees' control have been identified and quantified, and no matter what other information has been developed and submitted to the Regional Board, the Permittee	LA Permit Group	<p>The Regional Board considers a number of factors when addressing non-compliance with permit provisions, including efforts of the Permittee to comply, the severity of the non-compliance, and the contribution of other dischargers. The tentative order specifically states that each Permittee is only responsible for discharges from the MS4 for which it is owner and/or operator. A Permittee may demonstrate that its discharge did not cause or contribute to an exceedance of an applicable WQBEL or receiving water limitation in any of several ways. See tentative order, Part VI.E.2.b.v.</p> <p>Additionally, where new information is provided that merits a reconsideration of permit requirements, the permit includes a reopener provision, which may be invoked at any time.</p>	None

	<p>will be considered out of compliance with the Permit requirements. Furthermore, because of the structure established in this Permit, the Regional Board staff will have to consider all Permittees in this situation as being out of compliance with the Permit provisions if the strict numeric limits have not been met, regardless of the actions taken previously. This approach is inconsistent with the goals of good public policy, fair enforcement, fiscal responsibility and holding Permittees responsible only for discharges over which they have individual control.</p>			
<p>Incorporation of TMDLs</p>	<p>Because the majority of the TMDLs have not been incorporated into Permit requirements until now, MS4 Permittees have been put in the position of trying to comply with TMDL requirements without knowing how compliance with those TMDLs would be determined and without knowing when or if promised considerations of modifications to the TMDL would occur. So Permittees would be expected to be in immediate compliance with new Permit provisions irrespective of most precedent,</p>	<p>LA Permit Group</p>	<p>There is only a small subset of the 33 TMDLs for which final compliance deadlines have passed, and only three of these are significant in terms of MS4 discharges. In all three cases, the final deadlines that have passed are related to non-storm water discharges from the MS4, not storm water discharges. The CWA requires that non-storm water discharges through the MS4 be effectively prohibited to the extent that they are a source of pollutants to receiving waters. Furthermore, these final deadlines occurred between 3½ to 6 years ago in most cases. Additionally, Permittees have been on notice since 2006 regarding the manner in which these TMDL requirements would be incorporated into the permit. The LA County MS4 Permit was reopened in 2006 and again in 2007 to include these very requirements.</p> <p>Further, a TSO would provide additional time to comply, where justified, rather than requiring immediate compliance with the final WQBELs.</p>	<p>None</p>

	guidance regarding incorporation of TMDLs into MS4 Permits, and irrespective of what actions Permittees have taken to try and meet the TMDL requirements. This is neither fair nor consistent as requesting a TSO would place a Permittee in immediate non-compliance with the Permit and expose the Permittee to risk of third party lawsuits.			
Incorporation of TMDLs	Final compliance with TMDL Permit conditions should not occur prior to these additional TMDL reconsiderations. Additionally, the Permit should reflect any modifications to the TMDL schedules made through the reopener process, either through a delay in the issuance of the Permit until the modified TMDLs become effective, or by using its discretion to establish a specific compliance process for these TMDLs in the Permit. Providing for compliance with these TMDLs through implementation of BMPs defined in the watershed management plans as we have requested for all other TMDLs is a feasible, fair and consistent way to achieve this goal.	LA Permit Group, Inglewood	The Regional Board cannot delay incorporation of provisions in the permit consistent with the assumptions and requirements of the available WLAs from TMDLs that are in effect. Further, compliance schedules must be consistent with those established in the TMDL. However, the permit includes a provision that allows the Board to reopen and modify the permit to incorporate provisions as a result of future amendments to the Basin Plan, such as the reconsideration of a TMDL, including implementation schedules. See Part VI.A.7.a.iv.	Revisions to Part VI.A.7.a.
Final WLAs	<ul style="list-style-type: none"> Provide a provision which requires that a TMDL be reconsidered in light of information that was not 	LA Permit Group, La Verne, Pomona	The tentative order is not the place to provide a provision requiring that a TMDL is reconsidered in light of new information. In many cases, the Regional Board in the basin plan amendment itself has included one or more opportunities	Revision to Part VI.A.7.a

	<p>available when the TMDL was developed before the final WLAs become effective. Whenever the reconsideration has been completed, the Permit should be reopened to make changes to any wasteload allocation, time schedules, and other pertinent information.</p>		<p>to reconsider a TMDL based on new information. Additionally, as TMDLs are a part of the Basin Plan, the Regional Board may at any time reconsider aspects of it if warranted. The tentative order includes a provision that the order may be re-opened for a variety of causes including to incorporate provisions as a result of future amendments to the Basin Plan, such as reconsideration of a TMDL. See tentative order, Part VI.A.7.a.iv. Further, the permit has been revised to include a provision in Part VI.A.7.a under causes for modification to support a reopener of the permit to include provisions or modifications to WQBELs in Part VI.E. and Attachments L-R of the permit prior to the final compliance deadlines, if practicable, that would allow an action-based, BMP compliance demonstration approach with regard to final WQBELs for storm water discharges based on the Regional Board's review of relevant research on storm water quality and control technologies and the effectiveness of Watershed Management Programs in achieving interim WQBELs.</p>	
<p>Final WLAs for State-adopted TMDLs</p>	<p>The County is concerned that final WLAs for State-adopted TMDLs have been incorporated as numeric effluent limitations that apply at the point of discharge from the MS4 and, where applicable, as receiving water limitations. The more appropriate approach is to incorporate interim and final WLAs as BMP-based effluent limitations defined as TMDL Control Measures required in the Watershed Management Program. State that the implementation of the BMPs using an iterative process will place the Permittee into compliance with the MS4 Permit.</p>	<p>LA Permit Group, La Verne, Pomona, Santa Clarita (Comment 47, 48, 56), City of Los Angeles (Comment 11)</p>	<p>As previously discussed, the tentative order allows a BMP-based approach to compliance demonstration for interim WQBELs. Based on an evaluation of the effectiveness of this approach during the coming permit term, the Regional Board will consider whether to extend this approach to final WQBELs.</p>	<p>Revision to Part VI.A.7.a</p>

Compliance	<ul style="list-style-type: none"> • Provide for four compliance options for both interim and final WLAs: <ul style="list-style-type: none"> o Implement Actions/BMPs consistent with Watershed Management Program o Compliance at the outfall (end of pipe) o Compliance in the receiving water (river, creek, ocean) o No direct discharges 	LA Permit Group, La Verne, Pomona, Inglewood,	The tentative order provides the four suggested compliance options for interim WQBELs, and provides three of the four options for final WQBELs.	None
Adaptive management approach	<ul style="list-style-type: none"> • Allow for the adaptive management approach to be utilized for TMDL compliance, consistent with the timelines identified in the Watershed Management Programs. 	LA Permit Group, Pomona, La Verne	The adaptive management approach is accommodated in the tentative order, consistent with the timelines previously adopted by the Regional Board as part of each TMDL.	None
General	No reasonable potential analysis has been performed – even though USEPA guidance requires it as part of documenting the calculation of WQBELs in the NPDES permit’s fact sheet	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina	<p>Through the development of the TMDLs being incorporated in the tentative order, the Regional Board determined that discharges of pollutants from the Los Angeles County MS4 cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards. Therefore, WLA were assigned to Los Angeles County MS4 discharges during the adoption of the TMDLs.</p> <p>At the permitting stage, the Regional Board evaluates reasonable potential through a qualitative assessment process consistent with the USEPA NPDES Permit Writers Manual, Chapter 6, section 6.3.3. As part of this process, the Permit Writers Manual reiterates that where there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs or other permit requirements consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL per 40 CFR section 122.44(d)(1)(vii)(B). Therefore, WQBELs have been included in the tentative order for those pollutants with TMDL WLAs</p>	None

			<p>assigned to the Permittees' MS4 discharges. The analysis contained in the TMDLs and the fact sheet for the tentative order provides the support and rationale for the determination that discharges from the MS4 have the reasonable potential to cause or contribute to excursion above water quality standards in the receiving water.</p> <p>The Permit Writers Manual further specifies that even without a TMDL, a permitting authority could, at its own discretion, determine that WQBELs are needed for any pollutant associated with impairment of a waterbody. A permitting authority might also determine that WQBELs are required for specific pollutants for all facilities that exhibit certain operational or discharge characteristics. (See also CA § 402(p)(3)B(iii); <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166; State Water Board Order No. WQ 2001-15.)</p>	
Incorporation of TMDLs	Placing Regional Board/State Board TMDLs into the MS4 would result in serious consequences for permittees. For one thing, permittees subject to TMDLs that contain an implementation schedule with compliance dates for interim waste load allocations that have not been met, based on Los Angeles County mass emissions station or other data (e.g., from the Coordinated Monitoring Plan for the Los Angeles River Metals TMDL), will be in automatic non-compliance once the MS4 permit takes effect.	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina	<p>The permit must require compliance with any applicable TMDLs and associated implementation programs (CWA §§ 303(d), 402(p)(3)(B)(iii); Cal. Water Code §§ 13263, 13377). See also "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Requirements Based on Those WLAs.'" USEPA Office of Water, Nov. 10, 2010; and <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166 and State Water Board Order Nos. WQ 98-01, 99-05, and 2001-15.</p> <p>Further, the draft tentative order allows permittees to demonstrate compliance with interim WLAs in any one of several ways as identified in Part VI.E.2.a.-d.</p>	None
TSOs	The tentative order proposes a safeguard in this event: coverage under a time schedule order (TSO). Essentially, a TSO	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora,	The Regional Board is required to adopt and implement TMDLs through the MS4 permit, where Permittees' MS4 discharges are a source of the impairment. Each TMDL sets a compliance deadline as required by federal law. In some	None

	<p>is an enforcement action authorized under Porter-Cologne, the State's water code. The problem is that the Regional Board, at its discretion, could issue a clean-up and abatement order that could link permittees in the Dominguez Channel, Los Angeles River, and San Gabriel River Watersheds to the remediation of the Los Angeles and Long Beach Harbors which are currently CERCLA sites (caused by DDT, pesticides, metals, which are considered toxics, and other pollutants). Furthermore, the TSO, which is a State enforcement action, will not help with respect to a federal violation because of preemption. An exceedance will expose subject permittees to third party litigation under the Clean Water Act. NRDC would be able to take the matter straight to federal court.</p>	<p>Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>cases, the compliance deadline has passed. Unlike state law, the federal Clean Water Act allows for citizen suits. The Regional Board cannot change federal law to avoid the possibility of citizen suits, but can only use the authority it has under state law to provide additional time for compliance. The Regional Board cannot avoid its responsibility to protect water quality in order to protect dischargers from citizen suits. The tentative permit provides various approaches to provide time for compliance. The Water Code provides for the use of time schedule orders where justified to allow additional time to comply with such deadlines, and would also protect permittees from imposition of mandatory minimum penalties. The tentative permit sets forth the process the Regional Board will use in considering the issuance of time schedule orders.</p> <p>The adoption of a time schedule order is not the same as a cleanup and abatement order. The tentative permit addresses the use of time schedule orders to address compliance with TMDLs where deadlines have passed. The Regional Board does not intend to use the tentative permit to address cleanup of the Harbors; the tentative permit is intended to address ongoing discharge of pollutants into the MS4.</p>	
<p>TMDL implementation plans</p>	<p>The Regional Board has no legal authority under the Clean Water Act to incorporate implementation plans, schedules, or monitoring requirements into the MS4 permit. CWA §402(p)(B)(iii) simply states that controls are required to reduce the discharge of pollutants to the maximum extent practicable, including</p>	<p>Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>TMDLs are adopted by the Regional Water Board pursuant to CWA section 303(d) and CWC sections 13240 and 13242. TMDL implementation programs consist of a description of the nature of actions that are necessary to achieve the WLAs (and LAs), a time schedule for the actions to be taken, and a description of the monitoring and reporting to be undertaken to determine compliance with the WLAs. Because TMDLs and their programs of implementation are adopted through the basin plan amendment process in California, the TMDL implementation program contained in a regional water board's basin plan becomes a regulation upon approval by the State of</p>	<p>None</p>

	<p>management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. The application of this provision is limited to: (1) the implementation of BMPs specified in a stormwater management plan appropriated through the six core programs; and (2) outfall monitoring. Monitoring, as mentioned earlier, is limited to outfall and ambient monitoring. Ambient monitoring, which is receiving water-based, has been assumed by the Regional Board and is funded through a stormwater ambient monitoring program (SWAMP) surcharge on the annual MS4 permit fee. Federal stormwater regulations mention nothing about TMDL implementation plans and schedules in an MS4 permit.</p>		<p>California Office of Administrative Law. All permits must implement the applicable water quality control plan (i.e. Basin Plan), including any applicable TMDL implementation programs (CWA §§ 303(d), 402(p)(3)(B)(iii); Cal. Water Code §§ 13263, 13377). These Basin Plan provisions thus become the applicable regulations that authorize an MS4 permit to include compliance schedules to achieve effluent limitations derived from TMDL WLAs. It is unclear whether the commenters understand that the TMDL implementation programs are the basis for the compliance schedules and, without the TMDL implementation program, permittees would be required to comply with final WQBELs immediately. Further, USEPA has stated that, “[w]here a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, the permitting authority [<i>in this case, the Regional Water Board</i>] should consider the schedule as it decides whether and how to establish enforceable interim requirements and interim dates in the permit” (USEPA November 12, 2010 TMDL Memo).</p> <p>Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality and achieve the objectives of the Clean Water Act. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.) As explained in the tentative permit, compliance with the WLAs established in TMDLs is necessary to achieve compliance with water quality standards.</p> <p>USEPA has set forth in guidance regarding MS4 permits, that such</p>	
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			<p>permits must require compliance with applicable TMDLs to meet water quality standards. See “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Requirements Based on Those WLAs.’” USEPA Office of Water, Nov. 10, 2010. NPDES permits must include WQBELs or other permit requirements consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL per 40 CFR section 122.44(d)(1)(vii)(B). These WLA requirements include schedules for achieving the WLAs and monitoring and reporting to determine compliance. USEPA has stated that, “[w]here a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, the permitting authority [<i>in this case, the Regional Water Board</i>] should consider the schedule as it decides whether and how to establish enforceable interim requirements and interim dates in the permit” (USEPA November 12, 2010 TMDL Memo).</p> <p>Both receiving water monitoring and outfall (i.e. discharge or effluent) monitoring are well established in NPDES permits generally, and are supported by myriad federal authorities (See CWA section 308(a); 40 CFR sections 122.26(d)(2)(i)(F) and (d)(2)(iii)(D), 122.41(h), (j)-(l), 122.42(c), 122.44(i), and 122.48), as well as USEPA’s Part 2 MS4 permit application guide (USEPA 833-B-92-002).</p> <p>Also, it should be noted that the Water Board’s ambient monitoring program, SWAMP, stands for <i>Surface Water Ambient Monitoring Program</i>, not Storm Water Ambient Monitoring Program.</p>	
TMDL implementation plans	In fact, the Regional Board/State Board TMDL implementation plans, implementation schedules, and monitoring should be voided and prevented from being	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico	The Monitoring and Reporting Program (MRP) of the tentative order requires both receiving water monitoring and outfall (i.e. discharge or effluent) monitoring. The commenters are confusing ambient monitoring of waters to determine the <i>natural concentration</i> of water quality constituents with in-stream or receiving water monitoring to determine the <i>impact</i>	None

	<p>placed into the MS4 permit because (1) they set compliance determinant in the receiving water instead of the outfall; and (2) although the TMDL monitoring program requirements specify ambient monitoring that is to be performed by MS4 permittees, including Caltrans, the Regional Board has approved plans that treat wet weather monitoring as ambient monitoring, even though they are mutually exclusive. The Clean Water Act definition of ambient monitoring is the:</p> <p>Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.</p>	<p>Rivera, San Gabriel and West Covina</p>	<p><i>of discharges</i> on receiving water quality. Both receiving water and outfall monitoring are well established in NPDES permits generally and are supported by myriad federal authorities (See CWA section 308(a); 40 CFR sections 122.26(d)(2)(i)(F) and (d)(2)(iii)(D), 122.41(h), (j)-(l), 122.42(c), 122.44(i), and 122.48), USEPA’s Part 2 MS4 permit application guide (USEPA 833-B-92-002).</p> <p>In the case of MS4 discharges, to accurately determine the impact of these discharges on receiving water quality, it is necessary to monitor during both wet weather and dry weather conditions, i.e., during conditions when <i>non-storm water discharges from the MS4</i> may impact receiving waters and during conditions when <i>storm water discharges from the MS4</i> may impact receiving waters.</p>	
<p>TMDL implementation plans</p>	<p>Even if it were legally permissible for these TMDL elements to be incorporated into the MS4 permit, no permittee could be placed into a state of non-compliance because the legitimate compliance point is in the outfall. Because no outfall monitoring has occurred, no violation could arise and, therefore, there would be no</p>	<p>Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>NPDES permits must include WQBELs or other permit requirements consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL per 40 CFR section 122.44(d)(1)(vii)(B). These WLA requirements include schedules for achieving the WLAs and monitoring and reporting to determine compliance. If the implementation schedules adopted as part of the TMDLs were not included in the tentative order, Permittees would be required to comply immediately with the final WQBELs. The implementation schedules in essence allow Permittees to use an iterative approach, within a certain timeframe, to achieve</p>	<p>None</p>

	<p>need for a TSO.</p> <p>Recommended Correction: Eliminate requiring TMDL implementation plans, schedules, and monitoring to be incorporated into the tentative order</p>		<p>the final WQBELs.</p> <p>Outfall monitoring is not the only mechanism for determining compliance. The tentative order allows Permittees to demonstrate compliance at an outfall, jurisdictional boundary, or in the receiving water. These compliance points are consistent with the assumptions of the TMDLs. Compliance determination may be based on outfall monitoring data or other data and information that links the MS4 discharge to an excursion of receiving water limitations.</p>	
General	<p>CWC 13178 only deals with bacteria - please clarify how this applies to any other pollutant</p>	<p>City of Santa Clarita (Comment 49)</p>	<p>The tentative order recognizes that Cal. Water Code section 13178 is only applicable to bacteria source identification. The tentative order has been revised to allow the use of other accepted source identification protocols for exceedances of receiving water limitations or WQBELs for pollutants other than bacteria.</p>	<p>Revision to Order, Part VI.E.2.b.v.(3)</p>
General	<p>The City of Signal Hill also requests that Provision VI.E.2.d.i be modified by adding a subsection that specifies that a Permittee shall be considered in compliance with an interim water quality-based effluent limitation and/or interim receiving water limitations for pollutant(s) associated with a specific TMDL while preparing a Watershed Management Program Plan in accordance with Provision VI.E.3 and Provision VI.C. We further request that interim implementation schedules be placed in the permit for EPA-established TMDLs covered by Provision VI.E.3 to provide protection from third-party</p>	<p>City of Signal Hill</p>	<p>As discussed in response to other comments, Compliance with TMDLs, including WQBELs, is required to meet water quality standards. The tentative permit includes the opportunity for permittees to propose a watershed management program to comply with TMDLs, which would address compliance with receiving water limitations. The Regional Board cannot change federal law to relieve permittees from the possibility of citizen suits.</p> <p>The tentative permit is not proposing to amend the Basin Plan to revise implementation schedules. If a Basin Plan amendment occurs, the tentative permit includes a reopener to revise the permit consistent with the Basin Plan amendment, including TMDL reconsiderations that modify TMDL implementation schedules included in the Basin Plan.</p> <p>MS4 permits can only include compliance schedules for achieving WQBELs derived from interim and final TMDL WLAs, so long as the TMDL contains an implementation program adopted by the Regional Board and approved through the State's basin plan amendment process. TMDLs adopted by USEPA do not contain an implementation program. The</p>	<p>Revisions made to Part VI.E.</p>

	litigation while Watershed Management Programs are being prepared and Basin Plan Amendments with implementation schedules are being drafted and adopted		Regional Board's decision as to how to express permit conditions for USEPA established TMDLs is based on an analysis of several specific facts and circumstances surrounding these TMDLs and their incorporation into this Order, as explained in the Fact Sheet. For those reasons, the Board has determined that numeric WQBELs for these USEPA established TMDLs are infeasible at the present time. The Board may at its discretion revisit this decision within the term of the permit or in a future permit, as more information is developed to support the inclusion of numeric WQBELs. In lieu of inclusion of numeric WQBELs at this time, the tentative permit requires Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices that will be effective in achieving the numeric WLAs. Permittees will propose these BMPs to the Board in a Watershed Management Program, which is subject to Regional Water Board Executive Officer approval.	
General	Final Waste Load Allocations for TMDLs that were established with no knowledge if and how they could be achieved will place Cities in immediate non-compliance.	City of Torrance	As discussed in response to other comments, Compliance with TMDLs, including WQBELs is necessary to meet water quality standards. The WLAs in the TMDLs include schedules for achieving the WLAs, which were adopted as part of the TMDL in consideration of the implementation strategies that would be used to achieve the WLAs and the time required to implement these strategies. These schedules do not require immediate compliance; rather, the schedules allow Permittees to achieve compliance with TMDL related requirements over time. There is only a small subset of the 33 TMDLs for which final compliance deadlines have passed, and only three of these are significant in terms of MS4 discharges. In all three cases, the final deadlines that have passed are related to non-storm water discharges from the MS4, not storm water discharges. The CWA requires that non-storm water discharges through the MS4 be effectively prohibited to the extent that they are a source of pollutants to receiving waters. Furthermore, these final deadlines occurred between 3½ to 6 years ago in most cases. Additionally, Permittees have been on notice since 2006 regarding the manner in which these TMDL requirements would be incorporated into the permit. The LA	None

			<p>County MS4 Permit was reopened in 2006 and again in 2007 to include these very requirements.</p> <p>Further, a TSO would provide additional time to comply, where justified, rather than requiring immediate compliance with the final WQBELs.</p>	
General	<p>The statement that for approved Watershed Management Program used to establish compliance with Interim Water Quality-Based Effluent Limitations and Receiving Water Limitations, structural BMPs must be designed to treat the 85th percentile, 24-hour storm should be modified to allow for flexibility of BMPs. Retrofit BMPs may not be able to achieve treatment of the 85th percentile, 24-hour storm due to site constraints, but may be able to when combined with other BMPs or low impact development provisions into a <i>system of BMPs</i> that achieves compliance of RWL, WLA and MAL at the outfall or receiving water.</p> <p>Modify VI.E.2.d.(4)(b) on page 113 to read:</p> <p>“Structural storm water BMPs <i>or systems of BMPs</i> must be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm . . .</p>	City of Torrance (Comment 63), South Bay Cities	The Regional Board agrees with the proposed change.	Revision to Order, Part VI.E.2.d.(4)(b), as proposed by commenter.

General	Please include a paragraph that Permittees are not responsible for pollutant sources outside the Permittees authority or control, such as aerial deposition, natural sources, sources permitted to discharge to the MS4, and upstream contributions.	LA Permit Group (Comment 23)	<p>The permittees have ultimate authority and responsibility to prohibit, prevent, or otherwise control discharges that enter and exit the portions of the MS4 for which they are owners and/or operators. Even if the permittees do not themselves generate the pollutants entering/exiting their MS4s, the permittees are nevertheless responsible for ensuring that the pollutants do not reach receiving waters through their MS4. As recently stated by the 9th Circuit Court of Appeals, “the Clean Water Act does not distinguish between those who add and those who convey what is added by others - the Act is indifferent to the originator of water pollution.” (<i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 900.) Thus, the Clean Water Act, and this permit, appropriately places responsibility for preventing or controlling MS4 discharges on the permittees.</p> <p>Further, it is the Board’s intention to regulate all pollutants, whether they are anthropogenic or naturally occurring, that are discharged from the MS4 to receiving waters. The entire purpose of a NPDES permit is to regulate discharges of “pollutants” from point sources to receiving waters. The Clean Water Act’s definition of “pollutant” in section 502(6) does not distinguish between pollutants that are caused by anthropogenic or naturally occurring sources. Further, the definition of “waste” in California Water Code section 13050(d) specifically includes waste “associated with human habitation, or of human or animal origin.” Even if a permittee is not able to control the source of a naturally occurring pollutant, permittees are required to control pollutants through an MS4 to receiving waters.</p> <p>Permittees are not responsible for direct aerial deposition on waterbodies. However, permittees are responsible for controlling discharges from their MS4. Therefore, permittees are responsible for controlling discharges of pollutants from indirect aerial deposition on land surfaces.</p> <p>Notwithstanding the above, the tentative order addresses sources</p>	None
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			of pollutants outside the authority of MS4 Permittees. Discharges allowed by another NPDES permit are addressed in Part III, as an exception to the non-storm water discharge prohibition, and in Part VI.D.2.a.v. “Referral of Violations of the Industrial and Construction General Permits, including Requirements to File a Notice of Intent or No Exposure Certification”. Further, upstream contributions are addressed in several places including the Illicit Connections and Illicit Discharges Elimination Program (Part VI.D.9.b.iv.(2) and in the monitoring and reporting program through outfall based monitoring and jurisdictional boundary monitoring.	
General	This provision creates confusion and inconsistency with the language in the rest of the permit. By stating that the permittee shall demonstrate compliance through compliance monitoring points, it appears to preclude determining compliance through other methods as outlined in other portions of the permit. This provision does not reference any of the other compliance provisions in the TMDL section, and could therefore be interpreted on its own as a separate compliance requirement. Additionally, the requirement to use the TMDL established compliance monitoring locations regardless of whether an approved TMDL monitoring plan or Integrated plan has been developed is not consistent with the goal of integrated monitoring outlined in the permit. This provision	LA Permit Group (Comment 24)	The Regional Board agrees with the commenter’s proposed language.	Language revised

	would be more appropriate as a monitoring and reporting requirement for the TMDL section with modified language such as "Monitoring locations to be used for demonstrating compliance in accordance with Parts VI.E.2.d or VI.E.2.e shall be established at compliance monitoring locations established in each TMDL or 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)."			
General	For "each Permittee is responsible for demonstrating that its discharge did not cause or contribute to an exceedance," how is this going to be possible? There is allowed non-storm water discharges, a commingled system, and the LA County region is practically urbanized (impervious landscape). Additionally, a gas tanker on local freeways often discharges onto freeway drains, which connect to MS4 permittee drains - the point here is a private party as the actual discharger should be held responsible and not the MS4 permittee. Lastly, the Construction General Permit	LA Permit Group (Comment 25)	The permit covers a large geographic area. Permittees that discharge to a common outfall where the discharges commingle in the receiving water may be responsible for violations of the receiving water limitation. Once the Board determines that there is a violation of the receiving water limitations, or other conditions of the permit, based on monitoring reports and/or other information, it is up to the permittee to demonstrate that they are not responsible for the specific violation. The permit sets forth methods for a discharger to demonstrate that they are not responsible. The dischargers are responsible for complying with the terms of the permit; they cannot use another commingled discharger to shield themselves from responsibility for the discharge where they provide no information to show that they did not cause or contribute to the discharge. This view is consistent with the Clean Water Act which imposes strict liability and requires dischargers to establish and maintain records, sample and monitor discharges and report the results to the Board. (See, e.g., 33 U.S.C. § 1318(a); 40 C.F.R. § 122.41(j); 122.48 & 123.5.) This system of self-reporting is critical to the NPDES program, which	None

	<p>cannot establish numeric limitations without the Regional/State Boards clearly demonstrating how compliance will be achieved - the MS4 permit is overly conditioned in terms of achieving compliance and subjects MS4 permittees to violations/enforcement, and given these circumstances, the Boards need to clearly demonstrate how compliance will be achieved.</p>		<p>“fundamentally relies” upon it. (See <i>U.S. v. Brittain</i> (10th Cir. 1991) 931 F.2d 1413, 1416.) In addition, the federal regulations contemplate that co-permittees will be responsible for developing management programs and controls involving inter-governmental coordination to reduce the discharge of pollutants (40 C.F.R. § 122.26(d)(2)(iv)), must agree to accept roles and responsibilities necessary to ensure effective coordination (40 C.F.R. § 122.26(d)(2)(vii)); and must have legal authority and agreement with other dischargers to control contribution of pollutants from one portion of the MS4 to another (40 C.F.R. § 122.26(d)(2)(i)(D)). The Clean Water Act puts the onus on the permittee to have sufficient control over its system to prevent discharges that are not compliant. (See, e.g., 40 C.F.R. § 122.26(d)(2)(iv)(B)(3) [application for permit must show how permittees will investigate any part of their system with a reasonable potential for contributing pollutants into the system from other sources].)</p> <p>The draft tentative order addresses the issue of discharges from non-MS4 entities through the MS4 in a variety of ways. First, for non-storm water discharges, Parts III.A.4.d-e. and III.A.5. address authorized and conditionally exempt non-storm water discharges. Second, the issue of commingled discharges is addressed in Part VI.E.2.b. Storm water discharges by other entities (e.g., co-permittees, industrial facilities or construction sites covered by Statewide General Storm Water Permits) are addressed in Parts VI.A.2. “Legal Authority” and VI.D.2.iv. and v. “Progressive Enforcement and Interagency Coordination,” while illicit discharges including spills are addressed in Part VI.D.9.b.iv. and v.</p> <p>It is unclear why the commenter is referring to the Construction General Permit, as that permit is issued by the State Board and not this Regional Board.</p>	
General	This provision should not require that the permittee demonstrate that the discharge	LA Permit Group (Comment 26)	The Regional Board agrees with the comment. The tentative order is revised to allow a Permittee to demonstrate that the discharge from the Permittee’s MS4 is <i>controlled</i> to a level	Part VI.E.2.b.v.(2) – change

	from the MS4 is treated to a level that does not exceed the applicable water quality-based effluent limitation. Permittees may achieve the applicable WQBELs through means other than treatment and they should be able to demonstrate that their discharge does not exceed the applicable water quality-based effluent limitation through monitoring or other means than demonstration of treatment.		that does not exceed the applicable WQBEL.	“treated” to “controlled”
General	<p>Is this in effect setting a design storm for the design of structural BMPs to address attainment of TMDLs, or is it simply referring to SUSMP/LID type structural BMPs? If it is in effect setting a design storm, there needs to be some sort of exception for TMDLs in which a separate design storm is defined, e.g., for trash TMDLs where the 1-year, 1-hour storm is used.</p> <p>This is not clarified, but it is still a problem as not all retrofit projects which might be used to address TMDLs may be able to handle the full 85th percentile 24-hour storm, there should be some provision for doing this through a combination of BMPs, e.g., LID plus retrofit.</p>	LA Permit Group (Comment 28)	<p>Part VI.E.2.d.i.(4)(b) of the tentative order has been modified to read:</p> <p>“Structural storm water BMPs <i>or systems of BMPs</i> must be designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm, <i>and meet other storm design criteria established through TMDLs applicable to the watershed, and ...</i>”</p>	Revision to Part VI.E.2.d.i.(4)(b)
RWLs	Since the ultimate end goal of the TMDL is protection of	City of Los Angeles	Applicable receiving water limitations are those receiving water limitations (i.e., all water quality objectives or criterion	None

	<p>beneficial uses, attainment of water quality objectives/criteria protective of those uses should constitute compliance with the TMDL. However, Section E Parts 2.b.v.2, 2.d.i.2, and 2.e.i.2 limits this concept to applicable receiving water limitations. If water quality objectives/criteria are met in the receiving waters, Permittees should be in compliance with the TMDL regardless if the receiving water limitation is explicitly incorporated into the permit.</p> <p>Additionally, the language places upstream dischargers in jeopardy if downstream dischargers cause or contribute to exceedances. The current language indicates that compliance can be demonstrated if there are no exceedances at, or downstream of, the Permittee's outfall. For example, if a water quality objective is met in Reach 6 of the LA River but not in Reach 2 (over 20 miles downstream and a change in flow of over 80 cfs), those discharging to Reach 6 could be considered out of compliance.</p> <p>Based on these issues, please revise as follows: Section E Part 2.b.v.2</p>	(Comment 61)	<p>established pursuant to CWA section 303(c) or limitations to achieve such water quality objectives or criterion, such as receiving water conditions established in TMDLs) that apply to the subject water body. If water quality objectives/criteria for the pollutants addressed by the TMDLs are met in the receiving waters, Permittees would be in compliance.</p> <p>Monitoring data from outfalls and from the receiving water immediately downstream of the outfall will be used to determine whether upstream discharges have caused or contributed to downstream exceedances.</p>	
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	<p>“Demonstrate that the discharge from the Permittee’s MS4 is treated to the level that does not exceed the applicable water quality-based effluent limitation or <u>water quality objective.</u>”</p> <p>Section E Parts 2.d.i.2 and 2.e.i.2 as follows: There are no exceedances of the applicable receiving water limitation <u>water quality objectives</u> for the pollutant(s) associated with the specific TMDL in the receiving water(s) at, or downstream of, <u>the Permittee’s outfall(s).</u></p>			
Design Storm	<p>This incorporation of such a design standard seems to imply that during larger storms, water quality standards may not have to be met. Also please clarify if this is a recommendation or the intent is to prohibit the implementation of BMPs that will provide partial treatment of this design storm. Clarify the intended purpose of design standard.</p>	<p>City of Los Angeles (Comment 62)</p>	<p>The requirement to design and maintain storm water BMPs to treat storm water runoff from the 85th percentile, 24-hour storm only relates to structural BMPs. Permittees are expected to implement structural and non-structural controls to achieve water quality standards. This provision has been revised to state that structural storm water BMPs <i>should be</i> designed and maintained to treat runoff from the 85th percentile, 24-hour storm <i>at a minimum, where feasible.</i></p>	<p>Revision to Part IV.E.2.d.i.(4)(b)</p>
Definition of outfall	<p>Provide a consistent definition of outfall. A municipal storm drain outfall (or conduit) shall have a minimum pipe size of 24-inch diameter where a maintenance access or other point of access can be built based on hydraulic engineering design standards at the Permittee’s jurisdictional</p>	<p>City of Los Angeles (Comment 63)</p>	<p>The federal definition of “outfall” has been added to Attachment A, as follows: “<i>Outfall</i> means a <i>point source</i> as defined by 40 CFR §122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.”</p>	<p>Attachment A, added definition of “outfall” from 40 CFR § 122.26(b)(9)</p> <p>Added definition of “MS4 Access</p>

	boundary.		A new definition for MS4 access point has been added to Attachment A as follows: “An MS4 access point shall have a minimum 24-inch diameter pipe size where a maintenance access or other point of access can be built based on hydraulic engineering design standards at the Permittee’s jurisdictional boundary.”	Point”
WMP	Please note our comment regarding additional time will be needed for a more comprehensive Watershed Management Program Plan in Attachment A.	City of Los Angeles (Comment 64)	The tentative order has been revised to allow Permittees who work collaboratively and implement early actions to request 18 months to submit a draft Watershed Management Program instead of one year.	Language revised
General	Please add the language from interim limits E.2.d.4 a - c and EPA TMDLs to the Final Water Quality Based Effluent Limitations and/or Receiving Water Limitations to ensure sufficient coordination between all TMDLs and the timelines and milestones that will be implemented in the Watershed Management Program.	LA Permit Group (Comment 29)	It is premature to consider application of this BMP based compliance demonstration option to the final effluent limitations and final receiving water limitations – most of which have deadlines outside the term of the tentative order. More data is needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality to have the necessary assurance that these BMPs will ultimately achieve the final effluent limitations. The Regional Board will evaluate the effectiveness of this BMP-based compliance determination approach in ensuring that interim effluent limitations for storm water are achieved during this permit term. If this approach is effective, the Regional Board may consider within this permit term or during the next permit cycle whether it would be appropriate to allow a similar approach for demonstrating compliance with final effluent limitations applicable to storm water.	Revisions made to Part VI.A.7.a
General	This provision states "Permittees shall comply immediately ... for which final compliance deadlines have passed pursuant to the TMDL implementation schedule." This provision is unreasonable. First, various brownfields/abandoned toxic	LA Permit Group (Comment 30)	There is only a small subset of the 33 TMDLs for which final compliance deadlines have passed. None of these TMDLs are for toxic pollutants that might be related to brownfields/abandoned toxic sites. Only three of these are significant in terms of MS4 discharges. In all three cases, the final deadlines that have passed are related to non-storm water discharges from the MS4, not storm water discharges. The CWA requires that non-storm water discharges through the MS4 be effectively prohibited to the extent that they are a	None

	<p>sites exists, some of which were permitted to operate by State/Federal agencies - nothing has or will likely be done with these sites that contribute various pollutants to surface and sub-surface areas. Additionally, this permit is going to require a regional monitoring program - this program will yield results on what areas are especially prone to particular pollutants. Until these results are made known, MS4 Permittees will have a hard time knowing where to focus its resources and particularly, the placement of BMPs to capture, treat, and remove pollutants. For these reasons, this provision should be revised to first assess pollutant sources and then focus on compliance with BMP implementation.</p>		<p>source of pollutants to receiving waters. Furthermore, these final deadlines occurred between 3½ to 6 years ago in most cases. Additionally, Permittees have been on notice since 2006 regarding the manner in which these TMDL requirements would be incorporated into the permit. The LA County MS4 Permit was reopened in 2006 and again in 2007 to include these very requirements. Further, Permittees may request a TSO, which would provide additional time to comply, where justified, rather than requiring immediate compliance with the final WQBELs.</p>	
General	Please clarify that cities are not responsible for retrofitting.	LA Permit Group (Comment 31)	The Inventory of Existing Development for Retrofitting Opportunities in Part VI.D.8.d. does not require Permittees to implement retrofitting projects. Permittees may comply with applicable WQBELs and receiving water limitations contained in the Order using any lawful means.	None
General	Define "partial capture devices", define "institutional controls". Permittees need to have clear direction of how to attain the "zero" discharges which will have varying degrees of calculations regardless of which compliance	LA Permit Group (Comment 33)	Existing definitions for "partial capture device", "institutional controls", "full capture system", "Daily Generation Rate (DGR)", and "Baseline Waste Load Allocation" contained in Order No. 01-182 were inadvertently omitted from Attachment A of the tentative order. These definitions have been added to Attachment A.	Revisions to Attachment A.

	method is followed. Explain the Regional Board's approval process for determining how institution controls will supplement full and partial capture to attain a determination of "zero" discharge.			
Receiving Water Limitations	Further, the Regional Water Board should work with the State Water Board to consider other ways to strengthen the iterative process mandated by Order 99-05. The magnitude of changes resulting from expressing the final waste load allocations from 33 TMDL documents as numeric water quality-based effluent limitations could place some Permittees in immediate non-compliance with the permit if they do not have the ability to respond to exceedances of water quality standards, including WQBELs, through an orderly adaptive management process	City of Signal Hill	TMDLs and the schedules of implementation adopted as part of the TMDLs create an orderly iterative process for achieving compliance with the final WQBELs. If additional time is needed beyond that originally established in the TMDL, the Board may reconsider TMDLs at any time. Further, the tentative order recognizes that Permittees may request time schedule orders, where justified, which also provide an orderly iterative process for coming into compliance.	None
TSOs	<u>Section VI.E.2.c.iii Receiving Water Limitations Addressed by a TMDL</u> This section states, "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." Although the Regional Board does not intend	City of Malibu; City of Torrance (Comment 62), South Bay Cities, Peninsula Cities (Comment 32); El Segundo	Each TMDL sets a compliance deadline as required by federal law. In some cases, the compliance deadline has passed. Unlike state law, the federal Clean Water Act allows for citizen suits. The Regional Board cannot change federal law to avoid the possibility of citizen suits, but can only use the authority it has under state law to provide additional time for compliance. The tentative permit provides various approaches to provide time for compliance. The Water Code provides for the use of time schedule orders where justified to allow additional time to comply with such deadlines, and would protect a permittee from imposition of mandatory minimum	None

	to take enforcement action if the permittee is in compliance with the TSO, submittal of a TSO and implementing a compliance plan does not shield the City from citizen suits and may actually increase the risk of legal liability from citizen suits while the City is implementing its compliance schedule. This is a significant vulnerability that needs to be resolved.		penalties. The tentative permit sets forth the process the Regional Board will use in considering the issuance of time schedule orders.	
TMDL Reopener	Any TMDL, for which compliance with a waste load allocation (WLA) is exclusively set in the receiving water, shall be amended by a re-opener to also allow compliance at the outfall to allow that flexibility, or other end-of-pipe, that shall be determined by translating the WLA into non-numeric WQBELs, expressed as best management practices (BMPs). While the TMDL re-opener is pending, an affected Permittee shall be in compliance with the receiving water WLA through the implementation of permit requirements	LA Permit Group (Comment 1)	Reconsideration of TMDLs is outside the scope of the LA County MS4 Permit renewal. Permit requirements to comply with existing regulations contained in the Basin Plan cannot be suspended in anticipation of revising the regulation in the future. The tentative order contains a standard provision that allows the order to be re-opened to incorporate provisions as a result of future amendments to the Basin Plan, such as the adoption or reconsideration of a TMDL (see Part VI.A.7.iv.).	None
TMDL	Suggest wet weather compliance be partially defined by a design storm.	LA Permit Group (Comment 19)	Where a permittee demonstrates that a storm water controls to address a certain size of design storm would be sufficient to achieve applicable WQBELs and would ensure that MS4 discharges would not cause or contribute to an exceedance of receiving water limitations, the Board could consider such an approach in the future.	None
TMDL	Regional Board staff has	LA Permit Group	It is important to note that expectations with regard to MS4	None

<p>incorrectly determined that a WQBEL may be the same as the TMDL WLA, thereby making it a “numeric effluent limitation.” Although numerous arguments may be marshaled against the conclusion, the most compelling of all is the State Water Resources Control Board’s clear opposition reluctance to use numeric effluent limitations.</p> <p>In Water Quality Orders 2001-15 and 2009-0008 the State Board made it clear that: we will generally not require “strict compliance” with water quality standards through numeric effluent limitations,” and instead “we will continue to follow an iterative approach, which seeks compliance over time” with water quality standards.</p> <p>[Please note that the iterative approach to attain water quality standards applies to the outfall and the receiving water.]</p> <p>More recently, the State Board commented in connection with the draft Caltrans MS4 permit that numeric WQBELs are not feasible as explained in the following provision from its most recent Caltrans draft</p>	<p>(Comment 20); Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>permit requirements have changed since the early 2000s. This is apparent by examining the USEPA’s guidance on the inclusion of TMDL WLAs into MS4 permits from 2002 with more recent guidance from 2010 – USEPA expresses its position in 2002 as one in which it expects numeric effluent limitations will only be used in rare instances, while in 2010, USEPA states that numeric effluent limitations should be used where feasible to improve the accountability of storm water programs.</p> <p>Further, the inclusion of numeric effluent limitations is authorized by Clean Water Act section 402(p)(3)(B)(iii). This requirement gives USEPA or the State permitting authority discretion to determine what permit conditions are necessary to control pollutants. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166). 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). Water quality based effluent limitations must be consistent with the assumptions and requirements of available WLAs. WQBELs may be expressed narratively or numerically.</p> <p>Further, it should be noted that the State Water Board has expressed its strong intent that federally mandated TMDLs be given substantive effect in MS4 permits in order to improve the efficacy of MS4 permits. The State Water Board has stated that whether a future MS4 permit requirement appropriately implements a storm water WLA will need to be decided based on the Regional Water Board’s record supporting either the numeric or non-numeric effluent limitations contained in the permit.</p> <p>40 CFR section 122.44(k) provides that BMPs may be used as permit requirements in lieu of numeric effluent limitations</p>	
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	<p>order:</p> <p>Storm water discharges from MS4s are highly variable in frequency, intensity, and duration, and it is difficult to characterize the amount of pollutants in the discharges. In accordance with 40 CFR § 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits. This Order requires implementation of BMPs to control and abate the discharge of pollutants in storm water to the MEP.</p> <p>The State Board’s decision not to require numeric WQBELs in this instance appears to have been influenced by among other considerations, the <i>Storm Water Panel Recommendations to the California State Water Resources Control Board in re: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities</i>.</p>		<p>only when numeric effluent limitations are found to be infeasible. The Regional Water Board concludes that numeric WQBELs are feasible. 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.</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 also testified before this Board during the hearing on October 4-5, 2012 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.</p> <p>While the State Board recently issued the Caltrans MS4 permit without numeric effluent limits, it did incorporate by reference the WLAs assigned to Caltrans as contained in regional basin plans, including those contained in the Basin Plan for this region. The State Board made clear that it would reopen the Caltrans permit within one year to include detailed provisions implementing all TMDL WLAs in the state applicable to Caltrans. At that time, the State Board may include numeric WQBELs.</p>	
RWL	Please add receiving water limitations with iterative approach consistent with the CASQA language; as long as	City of Santa Clarita (Comments 50, 51)	Part VI.E.2.c. of the tentative order 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	None

	the permittee is following BMPs addressed in a watershed management plan the permittee shall be in compliance as in E.2d.1.4		compliance schedules, of Part VI.E. and Attachments L through R. Section V.A. of the Fact Sheet (Attachment F) discusses how exceedances of RWLs for water body-pollutant combinations not addressed by a TMDL will be addressed.	
Past Deadlines	This statement should be removed until such time as the Regional Board revisits all the studies that Permittees have developed, including natural source exclusions and other studies that explain sources that are outside Permittees control.	City of Santa Clarita (Comment 52)	Permit requirements to comply with existing regulations contained in the Basin Plan cannot be suspended in anticipation of revising the regulation in the future. The tentative order contains a standard provision that allows the order to be re-opened to incorporate provisions as a result of future amendments to the Basin Plan, such as the adoption or reconsideration of a TMDL (see Part VI.A.7.iv.).	None
WQBELs				
WQBELs	Reading the 2010 USEPA memorandum, together with Mr. Weiss's memorandum, creates the inescapable conclusion that (1) numeric WQBELs are permissible if "feasible" and (2) numeric WQBELs cannot be construed to only mean strict effluent limitations at the end-of-pipe (outfall) but more realistically must include surrogate parameters and other variants as well. Regional Board staff failed to examine alternative numeric WQBELs, along with BMP WQBELs, as a consequence of not conducting the appropriate analysis	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina; City of Signal Hill	Regarding the feasibility of numeric effluent limitations, the Regional Water Board concludes that numeric WQBELs are feasible. While a lack of data may have hampered the development of numeric effluent limitations for MS4 discharges in earlier permit cycles, 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 modeling approaches. As a result, it is possible to use these numeric WLAs to derive numeric WQBELs for MS4 discharges. USEPA has also acknowledged that its expectations regarding the application of numeric WQBELs to municipal storm water discharges have changed as the storm water permit program has continued to mature over the last decade. Federal regulations state that effluent limitations must be consistent with the assumptions and requirements of available WLAs. In its November 12, 2010 memo, USEPA stated that, "[w]here the WLA of a TMDL is expressed in terms of a surrogate pollutant parameter, then the corresponding permit can generally use the surrogate pollutant parameter in the WQBEL as well" (p. 3) (emphasis added). However, USEPA does not endorse the use of surrogate pollutant parameters where the WLA is not expressed in terms of the	None

			<p>surrogate parameter. The WLAs for the 33 TMDLs incorporated into the tentative order are expressed as actual pollutant loads and concentrations, not in terms of surrogate parameters. Additionally, the State and Regional Water Boards have concluded that sole reliance on MEP based permit requirements is not sufficient to ensure the achievement of water quality standards. Further, there is insufficient data and information available at this time on the prospective implementation of BMPs throughout Los Angeles County to provide the Regional Water Board reasonable assurance that the proposed BMPs would be sufficient to achieve the WQBELs. However, the tentative order allows Permittees to demonstrate compliance with interim WQBELs through implementation of actions (i.e., BMPs) in approved WMPs.</p>	
<p>WQBELs for non-stormwater</p>	<p>There cannot be a WQBEL to attain a dry weather TMDL WLA nor a WQBEL that addresses a non-stormwater municipal action level (MAL).</p> <p>The foundation for this argument lies in the federal limitation of non-stormwater discharges to the MS4 – not from or through it as the tentative order concludes.</p> <p>Conclusion: Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.</p> <p>Recommended Correction: Eliminate all references to comply with numeric WQBELs</p>	<p>Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina</p>	<p>This comment is specifically addressed in the “Non-Stormwater Discharges Matrix.”</p> <p>WQBELs are required for discharges that cause, contribute to, or have the reasonable potential to cause or contribute to exceedances of water quality standards. Through the development of the TMDLs being incorporated in the tentative order, the Regional Board determined that non-storm water discharges of pollutants from the Los Angeles County MS4 cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards. Therefore, where appropriate based on the source analysis, dry weather WLA were assigned to Los Angeles County MS4 discharges during the adoption of the TMDLs.</p> <p>At the permitting stage, Regional Board determined reasonable potential through a qualitative assessment process consistent with the USEPA NPDES Permit Writers Manual, Chapter 6, section 6.3.3. As part of this process, the Permit Writers Manual reiterates that where there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs or other permit requirements consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL per 40 CFR section</p>	<p>None</p>

			<p>122.44(d)(1)(vii)(B). Therefore, WQBELs have been included in the tentative order for those pollutants with TMDL WLAs assigned to Los Angeles County MS4 discharges. The analysis contained in the TMDLs and the fact sheet for the tentative order provides the support and rationale for the determination that discharges from the MS4 have the reasonable potential to cause or contribute to excursion above water quality standards in the receiving water (Attachment F).</p> <p>The Permit Writers Manual further specifies that even without a TMDL, a permitting authority could, at its own discretion, determine that WQBELs are needed for any pollutant associated with impairment of a waterbody. The tentative order concludes that non-storm water action levels are a necessary tool to address dry weather impairments in water bodies not currently addressed by a TMDL. The non-storm water action levels are not WQBELs, rather they are a tool for identifying non-storm water discharges from the MS4 that may be causing or contributing to the water quality impairments in the receiving water. This data will help Permittees target areas for focused implementation of control measures, such as their illicit connection/illicit discharge elimination program.</p>	
Non-stormwater	Federal stormwater regulations limits outfall monitoring to stormwater discharges. Therefore, Regional Board does not have the legal authority to compel compliance with dry weather WQBELs or non-stormwater MALs.	Cities of: Baldwin Park, Carson, Covina, Duarte, Glendora, Irwindale, Lawndale, Pico Rivera, San Gabriel and West Covina	<p>This comment is specifically addressed in the “Non-Stormwater Discharges Matrix.”</p> <p>Federal MS4 regulations do not limit outfall monitoring to stormwater discharges. Both receiving water monitoring and outfall (i.e. discharge or effluent) monitoring are well established in NPDES permits generally, and are supported by myriad federal authorities (See CWA section 308(a); 40 CFR sections 122.26(d)(2)(i)(F) and (d)(2)(iii)(D), 122.41(h), (j)-(l), 122.42(c), 122.44(i), and 122.48), as well as USEPA’s Part 2 MS4 permit application guide (USEPA 833-B-92-002). Specifically, outfall screening, including sampling, for non-storm water discharges from the MS4 is required per 40 CFR sections 122.44(d)(1)(iv)(D) and 122.44(d)(2)(iv)(B)(2)-(3).</p>	None
BMPs	Regulations do not require WQBELs to be numeric in	City of Signal Hill	While the permitting authority has some discretion in establishing permit requirements consistent with the	None

	<p>order to be consistent with the assumptions and requirements of waste load allocations. In fact, 2002 and 2010 EPA guidance memos both clearly allow the WQBELs in permits to be expressed either numerically or in the form of BMPs. It is a decision left to the permitting authority.</p>		<p>assumptions and requirements of available WLAs, this discretion is constrained in certain ways. Specifically, while BMPs are central to MS4 permits, permit requirements may only rely upon BMP based limitations in lieu of numeric effluent limitations if: (1) the BMPs are adequate to achieve water quality standards and (2) numeric effluent limitations are infeasible. There is insufficient data and information available at this time on the prospective implementation of BMPs throughout Los Angeles County to provide the Regional Water Board reasonable assurance that the BMPs will be sufficient to achieve the WQBELs.</p> <p>Regarding the feasibility of numeric effluent limitations, the Regional Water Board concludes that numeric WQBELs are feasible. 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 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.</p> <p>Lastly, to the extent the Board is exercising discretion in including numeric limits, which the Board has deemed appropriate to control pollutants in accordance with federal law, the Board is exercising discretion required and/or authorized by federal law, not state law. (See, <i>City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region</i> (2006) 135 Cal.App.4th 1377, 1389; <i>Building Industry Ass’n of San Diego County v. State Water Resources Control Bd.</i> (2004) 124 Cal.App.4th 866, 882-883.)</p>	
WQBELs	A BMP based approach to compliance determination	City of Signal Hill	The tentative order provides Permittees the opportunity to develop Watershed Management Programs, which may	None

	would allow credit for pollution prevention programs, such as SB 346, which target the true sources of pollutants over which Permittees have little or no control. Integrating WQBELs into the next generation of MS4 permits in the form of BMPs will encourage experimentation and strong pollution prevention efforts that could lead to achievement of water quality standards in a cost-effective manner		include implementation of pollution prevention efforts (including product reformulation/input change such as the elimination of copper in brake pads). Implementation of these efforts may be used to demonstrate compliance with interim WQBELs.	
WQBELs	In most cases, converting waste load allocations to WQBELs expressed as BMPs should not be time consuming, and having BMP implementation targets is an understandable and manageable task if money is available. On the other hand, meeting numeric WQBEL targets can be frustrating and potentially paralyzing and could cause more money to be spent on lawyers than on best management practices and other control measures. We urge you to direct staff to use the WQBELs as BMPs approach in a Revised Tentative Order	City of Signal Hill	The tentative order allows Permittees to develop Watershed Management Programs and then using implementation of these programs as a means of demonstrating compliance with interim WQBELs. It is premature to consider application of this action based compliance demonstration option to the final WQBELs and final RWLs that have deadlines outside the term of this Order. More data are needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality. The Regional Water Board will evaluate the effectiveness of this action based compliance determination approach in ensuring that interim WQBELs for storm water are achieved during this permit term. If this approach is effective, the Regional Water Board may consider within this permit term or during the next permit cycle whether it would be appropriate to allow a similar approach for demonstrating compliance with final WQBELs applicable to storm water.	None
WQBELs	The City of Signal Hill requests that the Board recognize the fears of Permittees and encourage expedient efforts to address the water quality	City of Signal Hill	The tentative order allows Permittees to develop Watershed Management Programs and then using implementation of these programs as a means of demonstrating compliance with interim WQBELs. It is premature to consider application of this action based compliance demonstration option to the final	None

	<p>impairments by including WQBELs expressed in the form of MEP compliant BMPs in the MS4 permits. Ideally, we would prefer that WQBELs always be expressed in the form of BMPs. However, we acknowledge that both the Board and the environmental community have concerns about the commitment of municipalities to effectively address water quality impairments. We believe that municipalities are more committed to improving water quality than either the Board or environmental groups believe we are. In order to give us a chance to demonstrate our commitment, we ask that you express WQBELs in the MS4 permits for at least the next permit term in the form of BMPs, with the provision that you will review this decision during the development of the next cycle of permits</p>		<p>WQBELs and final RWLs that have deadlines outside the term of this Order. More data are needed to validate assumptions and model results regarding the linkage among BMP implementation, the quality of MS4 discharges, and receiving water quality. The Regional Water Board will evaluate the effectiveness of this action based compliance determination approach in ensuring that interim WQBELs for storm water are achieved during this permit term. If this approach is effective, the Regional Water Board may consider within this permit term or during the next permit cycle whether it would be appropriate to allow a similar approach for demonstrating compliance with final WQBELs applicable to storm water.</p>	
WQBELs	<p>Part IV.A.2 of the Permit must be revised to clarify that the WLAs in the specified TMDLs are incorporated into the permit as WQBELs, rather than merely stating that the WQBELs “are established.”</p>	Environmental Groups	<p>WQBELs are derived from the WLAs applicable to Permittees’ MS4 discharges.</p>	None
WQBELs	<p>The CWA does not require the inclusion of WQBELs but makes their inclusion discretionary. Thus, if the</p>	County of Los Angeles (Comment 192)	<p>Section IV.C. of the Fact Sheet adequately supports the inclusion of WQBELs.</p>	None

	Board includes WQBELs in the permit, it must do so in a way that does not abuse that discretion.			
WQBELs	The Fact Sheet’s reference to State Board Order No. 2011-015 does not appear to support the Fact Sheet’s statement the sole reliance in MS4 permits on BMP-based requirements was not sufficient to ensure attainment of water quality standards.	County of Los Angeles (Comment 192)	The Fact Sheet and the information in the record adequately supports the conclusion that sole reliance on BMP-based requirements has not resulted in achieving water quality standards in the receiving waters of impaired water bodies.	None
WQBELs – References to 2010 USEPA memorandum	The Board should not cite this memo as authority and all references should be deleted. No decision on the memo has been made to date. Also, memo is a guidance memo, which USEPA has stated has no binding effect on any person, including USEPA, states or any regulated party.	County of Los Angeles (Comment 193)	Clean Water Act section 402(p)(3)(B)(iii) provides the authority for the Regional Board to include WQBELs in the permit. (See also <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166). The USEPA guidance memo is consistent with the Clean Water Act and the cited case. In addition, to date, there has been no indication that USEPA has withdrawn its memo. Thus, it is appropriate for the Board to refer to the memo and the statements therein.	None
WQBELs	The Board’s proposal to invoke WLAs as WQBELs is improper. WLAs serve an entirely different purpose than do WQBELs; and WLAs are not crafted pursuant to the Section 122.44(d)(1) procedures.	BILD	Clean Water Act section 402(p)(3)(B)(iii) provides the authority for the Regional Board to include WQBELs in the permit. (See also <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.) The Regional Board is required to implement the TMDLs through the MS4 permit where WLAs are assigned to permittees.	None
WQBELs	To the extent that the Board intends that exceedances measured pursuant to required monitoring shall be ipso facto or presumptive permit violations, then the permit requirements would not only	BILD	Through the development of the TMDLs being incorporated in the tentative order, the Regional Board determined that non-storm water and storm water discharges of pollutants from the Permittees’ MS4s cause, have the reasonable potential to cause, or contribute to an excursion above water quality standards. Therefore, where appropriate based on the source analysis, WLAs were assigned to Permittees’ MS4 discharges	None

	<p>exceed minimum federal requirements, they would violate federal NPDES regulations. Specifically, 40 CFR section 122.44(d)(1)(ii) and (iii) set forth the procedures that EPA or a state agency that is authorized to implement NPDES must follow whenever establishing WQBELs. The Board has pursued none of the Section 122.44(d)(1) procedures concerning the translation of water quality standards into WQBELs. The Board must not establish any WQBELs without first undertaking the 122.44(d)(1) procedures. Given the extreme variability of storm water, it is most probable that compliance with the Section 122.44(d)(1) procedures would result in adherence to an iterative BMP process approach.</p>		<p>during the adoption of the TMDLs.</p> <p>At the permitting stage, Regional Board determined reasonable potential through a qualitative assessment process consistent with the USEPA NPDES Permit Writers Manual, Chapter 6, section 6.3.3. As part of this process, the Permit Writers Manual reiterates that where there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs or other permit requirements consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL per 40 CFR section 122.44(d)(1)(vii)(B). Therefore, WQBELs have been included in the draft tentative order for those pollutants with TMDL WLAs assigned to Permittees' MS4 discharges. The analysis contained in the TMDLs and the fact sheet for the tentative order provides the support and rationale for the determination that discharges from the MS4 have the reasonable potential to cause or contribute to excursion above water quality standards in the receiving water. (Attachment F).</p>	
Trash				
Trash	<p>The LA County Flood Control District lost its appeal recently in the lawsuit regarding exceedances at the Wardlow Mass Emission Monitoring Station. In the Decision, the Court explicitly stated that the Federal Clean Water Act does not address the source of pollutants, but rather that the owner of a point source discharge is legally responsible</p>	City of Burbank	<p>The Board agrees that 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 the commenter notes, the 9th Circuit Court of Appeals recently held that the “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.” (NRDC v. County of Los Angeles (2011))</p>	None

	for the quality of the water leaving its outfall. Clearly, the District is legally responsible for any trash that enters its catch basins and the draft MS4 Permit Tentative Order must also make this distinction clear		673 F.3d 880, 900.) Flood control districts, like the LACFCD, have the authority and responsibility to implement structural and/or institutional controls to prevent trash from entering the MS4, and/or leaving the MS4. This notwithstanding, the Regional Board recognizes that trash, and the way in which it is regulated through TMDLs in the LA Region, is unique, and unlike other pollutants such as bacteria and metals. The Regional Board has established a framework for trash TMDLs that uses a land-based approach to compliance determination. This is possible, given the Regional Board’s working definition of “trash” for purposes of trash TMDLs, and given that there are mechanisms to capture and quantify 100% of accumulated trash within a jurisdiction prior to its discharge to the MS4. This allows compliance determination to focus on jurisdictional areas. However, flood control districts in the LA Region, such as LACFCD, own and retain control over large portions of the MS4 to which storm water and non-storm water from jurisdictions in the region is discharged and, which ultimately discharge to receiving waters. As such, the flood control districts share responsibility for ensuring that the MS4 is operated and maintained in such a way as to meet permit provisions to implement TMDL WLAs for trash. Many of the compliance strategies identified in the region’s trash TMDLs rely upon installing and maintaining structural BMPs within the physical infrastructure of the MS4. Therefore, the flood control districts should support wherever possible, municipalities efforts to implement such BMPs to achieve TMDL requirements.	
Trash	This section discusses the enforcement of water quality based effluent limitations for trash TMDLs, but is not consistent with the language included in the adopted trash	County of Los Angeles (Comment 42); City of Malibu	Permittees may achieve compliance with trash TMDLs in several ways, including through the installation of full capture devices. Part VI.E.5.b clearly outlines how compliance is to be determined where a Permittee elects to comply via the installation of full capture devices. Specifically, Parts VI.E.5.b.i.(1)(c)(i)-(ii) state that, “[a] Permittee shall be	None.

	<p>TMDLs, which allows for installation of full capture devices as a compliance method. For consistency, include or at minimum, reference, language describing the various compliance methods per the approved trash TMDLs.</p> <p>Add the following new subparagraph iii.: “iii. Subparagraphs i. ii. do not apply to Permittees who have installed approved, full capture systems throughout their jurisdictional area covered by the Trash TMDLs.”</p>		<p>deemed in compliance with its final effluent limitation if it demonstrates that all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified full capture systems...” and “[a] Permittee shall be deemed in compliance with its interim effluent limitations, where applicable, by demonstrating that full capture systems treat the percentage of the drainage areas in the watershed that corresponds to the required trash abatement.” The provisions contained in Part VI.A.14.b were originally included in amendments to the 2001 Order adopted by this Board in 2009 (R4-2009-0130) incorporating the Los Angeles River Watershed Trash TMDL into the permit.</p>	
Trash	<p>Section VI.E.5.b.i.2.b on Pg. 119, Footnote 43 Please clarify that it is a 30-day collection period since the footnote comes before the first mention of it. Suggest adding “30-day period as discussed further” to the condition.</p>	City of Malibu	<p>The permit is clear; the sentence following the footnote states that the DGR shall be determined from direct measurement of trash deposited in the drainage area during any thirty-day period...”</p>	None
Trash	<p>Recommend not listing specific water bodies in part E.5.b.(c) on page 118 because then it risks becoming obsolete if new TMDLs are established for trash, or if they are reconsidered. However, if Board staff determines to leave the lists, then please add Santa Monica Bay to the list.</p>	<p>LA Permit Group (Comment 17 & 32); City of Torrance (Comment 66), South Bay Cities; Peninsula Cities (Comment 60)</p>	<p>Santa Monica Bay was inadvertently omitted from the list and has been added to part E.5.b.(i)(1)(c). If new TMDLs are established for trash in the future, or if existing TMDLs are reconsidered, the permit will be modified pursuant to the provision in Part VI.A.7.a.iv. for permit reopener and modification as a result of future amendments to the Basin Plan, including the adoption or reconsideration of a TMDL.</p>	<p>Santa Monica Bay was added to the list in Part E.5.b.(i)(1)(c).</p>
Trash	<p>Substitute “MS4 conveyance system” not “drainage area” when discussing compliance</p>	<p>City of Torrance (Comments 67 and 68), South</p>	<p>The use of “drainage area” is appropriate. While the full capture systems are installed in the MS4, their purpose is to capture trash generated within the drainage area serviced by</p>	None

	with a trash TMDL via the full capture system method.	Bay Cities, Peninsula Cities (Comments 34 and 61)	the MS4 that would otherwise be discharged through the MS4 to receiving waters.	
Trash	The intent of the DGR is to obtain a measure of the effectiveness of institutional controls. Institutional controls are those measures/programs that adjust human behavior, in this case not contributing to stormwater pollution. These are typically long term programs and their results are not immediate. Prescribing an annual DGR is not sensible since representative data collection may not be realized. Therefore, the DGR or similar exercise to quantify institutional controls should be done for two consecutive years during the permit 5-year cycle.	City of Los Angeles (Comment 66)	An annual DGR is necessary to determine compliance with the trash effluent limitations, which are expressed as an annual load. However, the order allows permittees to propose a less frequent period for recalculation of the DGR subject to approval by the Regional Board Executive Officer (see Part VI.E.5.b.i.(2)(b)). Additionally,	None
Trash	Section VI.E.5.c.i on page 122, states that the compliance report is due October 31, 2012; while Attachment E, Section XIX TMDL Reporting, pg. E-56 states that a report is due December 15, 2013. Please revise the dates to be consistent.	City of Los Angeles (Comment 67), City of Torrance (Comment 69), South Bay Cities, Peninsula Cities (Comment 62)	The annual reporting date is December 15th; the date has been changed to December 15, 2013.	Date changed to December 15, 2013
Trash TMDLs	Trash TMDLs typically provide that the zero trash objective is functionally achieved so long as certified full capture devices treat up to the 1-year, 1-hour storm. Yet the enforcement provisions for trash TMDLs	Peninsula Cities (Comment 20)	Permittees may achieve compliance with trash TMDLs in several ways, including through the installation of full capture devices. Part VI.E.5.b clearly outlines how compliance is to be determined where a Permittee elects to comply via the installation of full capture devices. Specifically, Parts VI.E.5.b.i.(1)(c)(i)-(ii) state that, “[a] Permittee shall be deemed in compliance with its final effluent limitation if it	None

	<p>indicates that violations are limited to the days of a storm event of greater than 0.25 inches.</p> <p>Please clarify how this provision with respect to enforcement will apply in instances where a Permittee has complied with a final trash TMDL via installation of certified full capture devices which are not designed to control a storm event of greater than the 1-year, 1-hour storm</p>		<p>demonstrates that all drainage areas under its jurisdiction and/or authority are serviced by appropriate certified full capture systems...” and “[a] Permittee shall be deemed in compliance with its interim effluent limitations, where applicable, by demonstrating that full capture systems treat the percentage of the drainage areas in the watershed that corresponds to the required trash abatement.” The provisions contained in Part VI.A.14.b were originally included in amendments to the 2001 Order adopted by this Board in 2009 (R4-2009-0130) incorporating the Los Angeles River Watershed Trash TMDL into the permit.</p>	
MFAC/TMRP	MFAC and TMRP should be an option available to the Los Angeles River.	LA Permit Group (Comment 34)	MFAC and TMRP are applied in cases where non-point sources are significant contributors to the trash impairment. Per the Los Angeles River TMDL, “non-point sources, i.e. direct deposition of trash by people or wind into the water body is a de minimus source of trash loading to the LA River.” Therefore, these options are not applicable.	None
Full capture systems	For reporting compliance based on Full Capture Systems, what is the significance of needing to know “the drainage areas addressed by these installations?” Unfortunately, record keeping in Burbank is limited to the location and size of City-owned catch basins. A drainage study would need to be done to define these drainage areas. As such, we do not believe this requirement serves a purpose in regards to full capture system installations and their intended function.	LA Permit Group (Comment 35)	<p>Full capture systems are assumed to remove all the trash generated in the areas draining to (or served by) them. In order to determine the degree of compliance it is necessary to determine how much of a jurisdiction’s area is being served by full capture systems. This is the purpose for requiring information on “the drainage area addressed by these installations.”</p> <p>However, where information on drainage area is not available, an estimate of the percentage of the drainage area covered by full capture systems may be obtained from the ratio of the number of catch basins with full capture installations to the total number of catch basins within a jurisdictional area.</p>	None
Monitoring	Please ensure the monitoring	City of Santa	Monitoring and reporting requirements for trash are cross-	None

and Reporting Requirements	and reporting requirements of Part VI.E.5 are cross referenced; also please add monitoring should be part of an integrated monitoring plan	Clarita (Comment 53)	referenced in Attachment E, Part III.H.2. Additionally, Attachment E, Part IV makes it clear that an integrated monitoring program (i.e., IMP or CIMP) must address all TMDL and non-TMDL monitoring requirements of the Order, which includes those for trash.	
Compliance with Trash TMDLs	Section E.5.b.i(2) (118) appears to indicate that cities installing lesser effective partial control devices may be eligible for a determinate of full compliance while those cities such as Downey that installed the full capture system would not be. This can and should be remedied by including the partial installation of full-capture devices in combination with institutional control as satisfying this item.	City of Downey; City of Monterey Park	Permittees may use combined compliance approaches that include both full capture systems and partial capture devices and institutional controls per Part VI.E.5.b.i.(3).	None
Final Numeric Limits	Cities are concerned that the final TMDL goals will be strict numeric limits. For the purpose of this MS4 permit, it is requested that the final numeric limits be listed as iterative adaptive goals and that as the final date of the implementation period approaches, the Basin Plan be re-opened to review the progress to date and make a determination at that time whether to establish strict numeric limits or a continuation of the iterative adaptive process	Cities of Downey, Norwalk	The decision to reconsider TMDLs that have been incorporated into the Basin Plan, including the timing of such reconsideration, is outside the scope of this permitting action. The tentative order includes opportunities to review progress toward achieving interim and final WQBELs during the permit term, and evaluate the effectiveness of Permittees' storm water management programs and, where applicable, Watershed Management Programs. On the basis of this review and evaluation, the Regional Water Board may consider whether it would be appropriate to allow a BMP based approach for demonstrating compliance with final WQBELs applicable to storm water in a subsequent permit cycle.	None
Numeric WQBELs	Requiring adherence to strict numeric water quality limits for compliance with final TMDL objectives does not	Peninsula Cities	The tentative order provides Permittees with time to identify and implement measures for achieving the WQBELs, consistent with the implementation schedules adopted by the Regional Water Board for the TMDLs.	None

	acknowledge the scientific uncertainty and limitations in the data and models used to adopt the TMDLs in the first place, and does not address the difficulties inherent in developing cost-effective measures for achieving the limits		Comments regarding scientific uncertainty or limitations in the data and models used to establish the TMDLs are outside the scope of this action. Uncertainty and limitations in the data and models was addressed in the adoption of the TMDLs.	
Numeric Limits	The statement in the Fact Sheet (p. F-80) that an “NPDES permit should incorporate the WLAs as numeric WQBELs, where feasible,” does not follow from the CWA or the regulations.	County of Los Angeles (Comment 200)	That is incorrect. Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i> ” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166. Compliance with the TMDLs is necessary to achieve compliance with water quality standards. The statement is also consistent with USEPA guidance.	None
Numeric Limits	The inclusion of numeric limits in the form of numeric WQBELs or RWLs, as a matter of law, exceed the MEP standard and State law and policy.	City of Signal Hill	That is incorrect. Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i> ” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. See <i>Defenders of Wildlife v. Browner</i> , 191 F.3d 1159, 1166 (1999). Compliance with the TMDLs is necessary to achieve compliance with water quality	None

			<p>standards.</p> <p>The inclusion of numeric limits does not cause the permit to be more stringent than federal law. Federal law authorizes both narrative and numeric effluent limitations to meet state water quality standards. Thus, the inclusion of numeric limits as discharge specifications in an NPDES permit in order to achieve compliance with water quality standards is not a more stringent requirement than the inclusion of BMP based permit requirements to achieve water quality standards. While expressed differently, both types of provisions have the same goal, which are to achieve compliance with water quality standards.</p> <p>The Board also notes that Order No. 01-182 required permittees to comply with receiving water limitations. The receiving water limitations are the water quality standards for a specific water body, which are generally expressed numerically. In the judicial litigation concerning Order No. 01-182, the Los Angeles Superior Court found that the terms of Order No. 01-182, including the receiving water limitations, were consistent with the MEP standard. (See <i>In re Los Angeles County Municipal Storm Water Permit Litigation</i> (Sup. Ct. Los Angeles County, March 24, 2005, Case No. BS 080548), Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-9.)</p>	
Numeric Limits	All permit provisions that do not allow compliance through the submission of Watershed Management Plans where reasonable assurance can be provided or through the use of full-capture measures for trash TMDLs are requirements that cannot be possibly be complied with. The inclusion of such numeric limits is not supported by sufficient findings, the	City of Signal Hill	The Fact Sheet includes detailed information supporting the basis for inclusion of WQBELs.	None

	evidence, or applicable law.			
Numeric Limits	The permit should be revised to be consistent with the MEP standard by specifically allowing for a “safe harbor” or BMP deemed compliance approach through an iterative/adaptive management process. It has long been recognized by the State Board, as well as the courts and USEPA, that the use of MEP compliant BMPs is the only means by which municipalities have to comply with MS4 permit terms.	City of Signal Hill	<p>The commenter misstates the applicable law. Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166). The use of WQBELs, including numeric limits, is authorized by the Clean Water Act.</p> <p>Further, the Board is not required to provide a “safe harbor.” During the litigation on the 2001 MS4 permit, 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 state court’s decision was confirmed in 2011 by the Ninth Circuit’s decision in <i>NRDC v. County of Los Angeles</i> (2011) 673 F.3d 880, 886.)</p>	None
Numeric Limits	Municipalities must develop BMPs that exceed the MEP standard to meet numeric limits. This requires municipalities to develop and implement impracticable BMPs that are not technically and/or economically feasible.	City of Signal Hill	<p>The comment misstates the applicable law. Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion</p>	None

			<p>to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.) The use of WQBELs, including numeric limits, is authorized by the Clean Water Act.</p> <p>The inclusion of numeric limits does not cause the permit to be more stringent than federal law. Federal law authorizes both narrative and numeric effluent limitations to meet state water quality standards. Thus, the inclusion of numeric limits as discharge specifications in an NPDES permit in order to achieve compliance with water quality standards is not a more stringent requirement than the inclusion of BMP based permit requirements to achieve water quality standards. While expressed differently, both types of provisions have the same goal, which are to achieve compliance with water quality standards.</p> <p>The tentative order includes opportunities to review progress toward achieving interim and final WQBELs during the permit term, and evaluate the effectiveness of Permittees’ storm water management programs and, where applicable, Watershed Management Programs. On the basis of this review and evaluation, the Regional Water Board will consider whether it would be appropriate to allow a BMP based approach for demonstrating compliance with final WQBELs applicable to storm water.</p> <p>Further, there are elements of technical and economic feasibility inherent in the MEP standard. While the term “maximum extent practicable” is not specifically defined in the Clean Water Act or its implementing regulations, USEPA, courts, and the State Water Board have addressed what constitutes MEP. MEP is not a one-size fits all approach. Rather, MEP is an evolving, flexible, and advancing concept, which considers practicability. This includes technical and economic practicability. Compliance with the MEP standard involves applying BMPs that are effective in reducing or eliminating</p>	
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			<p>the discharge of pollutants in storm water to receiving waters. BMP development is a dynamic process, and the menu of BMPs may require changes over time as experience is gained and/or the state of the science and art progresses. MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically practicable BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. The State Water Board has held that “MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the costs would be prohibitive.” (State Water Board Order WQ 2000-11.)</p>	
Numeric Limits	<p>The ultimate outcome of imposing numeric effluent limits on municipalities will not be to improve water quality, but instead to increase litigation and attorneys fees in fighting enforcement actions and citizen suits, and, as well, will subject municipalities to unnecessary penalty claims, including mandatory minimum penalties.</p>	City of Signal Hill	<p>Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. See <i>Defenders of Wildlife v. Browner</i>, 191 F.3d 1159, 1166 (1999). The use of WQBELs, including numeric limits, is authorized by the Clean Water Act and the tentative order includes findings to support the conclusion that such limits are necessary to control pollutants and meet water quality standards.</p> <p>The tentative permit provides flexibility to permittees on how to demonstrate compliance with the permit terms.</p>	None
Numeric Limits	<p>CASQA's proposal adding language to Part V is a step in the right direction in attempting to developing a deemed compliance approach. However,</p>	City of Signal Hill	<p>The tentative order includes opportunities to review progress toward achieving interim and final WQBELs during the permit term, and evaluate the effectiveness of Permittees’ storm water management programs and, where applicable, Watershed Management Programs. On the basis of this review and</p>	None

	the City believes that any such MEP BMP deemed compliance approach must equally extend to WLAs from TMDLs to be incorporated into the Permit, and also believe that CASQA's language should be expanded to make clear that good faith compliance with the iterative/adaptive management process is, in fact, compliance with all applicable receiving water limits and WQBELs or other numeric effluent limits, including "action levels."		evaluation, the Regional Water Board will consider whether it would be appropriate to allow a BMP based approach for demonstrating compliance with final WQBELs applicable to storm water in the future.	
Numeric Limits	Requiring strict compliance with numeric limits in a MS4 permit in most cases is requiring compliance with terms that are impossible to achieve, given the variability of the potential sources of pollutants in urban runoff, as well as the unpredictability of the climate. The Clean Water Act does not require permittees to do the impossible and comply with unachievable numeric limits. The permit, as a matter of law, cannot impose terms that are unobtainable. Therefore, numeric limits must be stricken.	City of Signal Hill	Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i> ” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166). The use of WQBELs, including numeric limits, is authorized by the Clean Water Act and the tentative order includes findings to support the conclusion that such limits are necessary to control pollutants and meet water quality standards. The tentative permit provides flexibility to permittees on how to demonstrate compliance with the permit terms.	None
Numeric Limits	The Board failed to take into account the practicability of complying with many of the numeric limitations set forth in	BILD	Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control	None

	<p>the Draft Permit. Thus, there is no substantial evidence to support a finding of practicability concerning most if not all of the NELs reflected in the Draft Permit. The Board should therefore make it plain that the numeric effluent limits in the final permit should be employed only as part of an iterative process leading toward compliance with all such NELs.</p>		<p>techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166 [“Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants.”].) In this case, the state has authority to require controls, including compliance with WQBELs, to comply with water quality standards. The TMDLs took into account practicability in evaluating reasonably foreseeable methods of compliance with the TMDLs.</p> <p>The Board has also taken into account practicability by providing compliance schedules, where authorized.</p>	
<p>California Water Code sections 13000, 13263, and 13241</p>	<p>Permit terms requiring compliance with numeric limits, irrespective of the MEP standard, along with the new “discharge prohibition” terms, are required to be adopted in accordance with the requirements of California Water Code sections 13000, 13263 and 13241.</p>	<p>City of Signal Hill</p>	<p>The requirements of the permit are not more stringent than federal law and, therefore, compliance with Water Code section 13241 on its own or through Water Code section 13263 is not required. Water Code section 13241 requires the Regional Water Board to consider certain factors, including economic considerations, in the adoption of water quality objectives. Water Code section 13263 requires the Board to take into consideration the provisions of section 13241 in adopting waste discharge requirements. In <i>City of Burbank v. State Water Resources Control Board</i> (2005) 35 Cal.4th 613, the California Supreme Court considered whether regional water boards must comply with section 13241 when issuing waste discharge requirements under section 13263(a) by taking into account the costs a permittee will incur in complying with the permit requirements. The Court concluded that whether it is necessary to consider such cost information “depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act.” (<i>Id.</i> at p. 627.) The Court ruled that regional water boards may not consider the factors in</p>	<p>None</p>

			<p>section 13241, including economics, to justify imposing pollutant restrictions that are less stringent than the applicable federal law requires. (<i>Id.</i> at p. 626-627 Nevertheless, the Fact Sheet includes a detailed analysis of the factors set forth in Water Code section 13241.</p> <p>Further, Water Code section 13000 does not impose an affirmative duty on the Board to consider the statements of legislative intent found in section 13000. See <i>City of Arcadia v. State Water Resources Control Board</i> (2011) 191 Cal.App.4th 156, 176.) A statute containing “a general statement of legislative intent...does not impose any affirmative duty that would be enforceable...” (<i>Shamsian v. Department of Conservation</i> (2006) 136 Cal.App.4th 621, 640-641; see also <i>Common Cause v. Board of Supervisors</i> (1989) 49 Cal.3d 432, 444 [“the precatory declaration of intent expressed in the statute must be read in context” and “cannot be viewed as independently creating substantive duties...in addition to those imposed by the regulation”].)</p>	
Compliance Schedules	Compliance schedules set out in TMDLs implementing California Toxics Rule criteria are not authorized by the Inland Surface Water Plan.	Environmental Groups	<p>The State Water Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits ("Compliance Schedule Policy" or "Policy ") does not apply to MS4 permits because the Compliance Schedule Policy only applies to NPDES permits with effluent limitations established under CWA section 301(b)(1)(C): "[T]his Policy shall apply to all NPDES permits adopted by the Water Boards that must comply with [CWA] section 301(b)(1)(C) and that are modified or reissued after the effective date of the Policy." MS4 permits are not subject to CWA section 301(b)(1)(C). Rather, effluent limitations in MS4 permits are established pursuant to CWA section 402(p)(3)(B), and, if applicable, section 303(d).</p> <p>Further, the Inland Surface Water Plan is also inapplicable as, by its own terms, it does not apply to storm water.</p> <p>All permits must implement the applicable water quality control plan (i.e. Basin Plan), including any applicable TMDL</p>	None

			implementation programs (Cal. Water Code §§ 13263, 13377).	
Compliance Schedules	Where TMDL deadlines have already passed, allowing Permittees additional time to comply with the WLAs as a term of the re-issued MS4 Permit will not lead to compliance “as soon as possible,” which is in violation of 40 CFR § 122.27. The TMDL schedules therefore cannot be incorporated into the MS4 Permit.	Environmental Groups	The tentative permit does not propose to incorporate compliance schedules into the permit for TMDL deadlines that have passed; rather it sets forth the process for a permittee to seek a time schedule order pursuant to Water Code section 13301. The Regional Board has authority to issue TSOs in appropriate circumstances. Prior to issuance of such an order, the Regional Board must consider available information, including public comments, to determine whether to issue a TSO and what conditions should be included.	None
Compliance Schedules	Any implementation schedule set forth in an applicable TMDL that allows for more than 1 year to achieve compliance and lacks interim deadlines cannot be incorporated into the MS4 Permit as an NPDES compliance schedule. This specifically applies to the implementation schedules set out in the Malibu Creek Bacteria TMDL, the SMBBB TMDLs, and the LA River Indicator Bacteria TMDL. These compliance schedules must either be modified to comply with the regulations or eliminated in their entirety.	Environmental Groups	The compliance schedules in the permit are consistent with the TMDL implementation plans set forth in the Basin Plan. USEPA anticipates that MS4 permits will include compliance schedules based on an implementation plan: "Where a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, the permitting authority should consider the schedule as it decides whether and how to establish enforceable interim requirements and interim dates in the permit." See “Memorandum, Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs’,” dated November 12, 2010. Also, all permits must implement the applicable water quality control plan (i.e. Basin Plan), including any applicable TMDL implementation programs (Cal. Water Code §§ 13263, 13377).	None
Compliance Schedules	Part VI.E.(2)(d)(i)(4) unlawfully provides a compliance determination for interim limits where a Permittee is merely implementing a Watershed Management Plan rather than actually achieving	Environmental Groups	All permits must implement the applicable water quality control plan (i.e. Basin Plan), including any applicable TMDL implementation programs (Cal. Water Code §§ 13263, 13377). The proposed watershed management programs cannot be used to avoid compliance with the TMDLs in accordance with the implementation plans in those TMDLs. Watershed Management Programs must include a Reasonable Assurance	None

	the defined interim limits. This violates the requirements for interim deadlines in 40 CFR § 122.47. The permit nowhere references 40 C.F.R. § 122.47, nor does the permit explain how the requirements of this regulation have been met.		Analysis that demonstrates that the watershed control measures proposed are sufficient to achieve interim and final WQBELs and RWL consistent with applicable compliance schedules. If this reasonable assurance is not demonstrated, Permittees may not use a WMP to demonstrate compliance with interim WQBELs and RWLs. Furthermore, Permittees must evaluate the effectiveness of their WMP and modify the WMP as necessary to ensure that interim WQBELs and RWL are achieved consistent with applicable compliance schedules.	
Compliance Schedules	Each TMDL requirement with a future final compliance deadline must include interim numeric benchmarks throughout the process of implementation. This is the only way to track a Permittee's progress and evaluate BMPs and progress toward final compliance along the way, and is consistent with the requirements that compliance schedules include interim deadlines (40 CFR § 122.47(a)(3).)	Environmental Groups	As authorized and/or required by Water Code sections 13263 and 13377, the compliance schedules are consistent with the TMDLs and contain interim requirements where appropriate.	None
Compliance Schedules	Each Permittee should be required to report on BMP implementation, BMP maintenance activities, and water quality monitoring results (which some TMDLs require independently) on an annual basis to the Board. The requirement that this information merely be available for inspection by the Board is insufficient to ensure that the public can access information related to permit implementation and	Environmental Groups	The Regional Board is not required to require permittees to submit all information. However, the permit requires annual reporting in Attachment E-MRP, which will include information on permittees' implementation of BMPs, and reporting of all monitoring results. Any information submitted to the Regional Board in these annual reports is available to the public.	None

	compliance.			
<i>Compliance Determination</i>				
Detected Exceedances	As the Draft Permit now reads, any and all detected exceedances of numeric WQBELs will apparently be deemed ipso facto or presumptive permit violations. The Board should expressly state in the final permit that exceedances found through monitoring will not constitute ipso facto or even presumptive permit violations. Instead, the final permit should state that detectable exceedances should be used to trigger iteration concerning the selection and deployment of BMPs where reasonably practicable.	BILD	The Regional Board does not expect that any measured numeric exceedance will always constitute a permit violation by a particular permittee. In determining whether a numeric exceedance constitutes a permit violation by a particular 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 Regional Board does not intend that numeric limitations operate as “ipso facto” or “presumptive enforceable permit violations”, but does not need to clarify the permit because it already provides clarification.	None
Causation	If the final permit is not clarified to state that any measured numeric exceedances do not constitute permit violations, the final permit will violate basic due process principles because the permit would fail to take into account causation as a necessary element of finding an MS4 permittee liable for a violation, particularly in regard to influent to the MS4 which is completely impossible to arrest. MS4 permittees largely in no way cause the water quality problems. It is unreasonable to penalize MS4 permittees or	BILD	The Regional Board does not expect that any measured numeric exceedance will always constitute a permit violation by a particular permittee. In determining whether a numeric exceedance constitutes a permit violation by a particular 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 Regional Board does not intend that numeric limitations operate as “ipso facto” or “presumptive enforceable permit violations”, but does not need to clarify the permit because it already provides clarification.	None

	<p>developers for the fate and disposition of natural loads, because they do constitute an anthropogenic “addition” of a pollutant to receiving waters. Similarly, other influent into an MS4 – even if it is anthropogenic in its origins – is simply impossible to prevent or reduce in many storm events. If the Board intends that any numeric limitations should operate as thresholds for ipso facto or presumptive enforceable permit violations, then the Board would need to devise a way to incorporate a principle similar to the one that led to 40 C.F.R. § 122.45(g) – the federal “gross-net” regulations for industrial facilities.</p>			
Commingled Discharges	<p>This section should make clear that where there is a commingled discharge to a receiving water, the Permittees who contribute to the commingled discharge are required to work together to assure that the WLA is met, but no one Permittee is responsible for meeting the WLA itself or is responsible for addressing pollutants that come from another Permittee’s MS4. Part VI.E.2.b.iii. needs to be clarified to make clear that it is not intended to conflict with</p>	<p>County of Los Angeles (Comment 117)</p>	<p>The Permit is adequately clear on this issue.</p>	<p>None</p>

	Part VI.E.2.b.ii. or 40 CFR § 122.26(a)(3)(vi).			
Commingled Discharges	For clarification, Part VI.E.2.b.iv. should be modified to provide that where a commingled discharge exceeds applicable water quality standard, all Permittees that have contributed to the commingled discharge are responsible for determining the source(s) of the pollutants.	County of Los Angeles (Comment 118)	The Permit adequately addresses this comment by allowing permittees who may have commingled discharges to establish a plan for determining compliance.	None
Commingled Discharges	Where a Permittee receives commingled discharges from upstream permitted and non-permitted sources, the Permittee should be allowed to show that its discharge contains pollutants, the sources over which the Permittee does not have control. Recommend adding a subparagraph 4 to Part VI.E.2.b.iv. that says, “Demonstrate that its discharge contains contributions from other sources, including but not limited to discharges of other Permittees, which have the potential to have caused or contributed to the exceedance at issue.	County of Los Angeles (Comment 119)	The Regional Board agrees that information about other sources will be considered by the Board in determining compliance.	None
Commingled Discharge	Part VI.E.2.b.v.(1) is not consistent with the sections for Interim WQBELs and/or RWLs or for Final WQBELs and/or RWLs. Recommendation Revise to read: “Demonstrate	County of Los Angeles (Comment 120)	The Regional Board agrees with the comment and has revised the permit accordingly.	None

	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 for the pollutant(s) associated with a specific TMDL;”			
Joint Responsibility	The Permit improperly imposes joint liability and joint and several liability for WQBEL and receiving water exceedances. It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party is responsible only for its own discharges or those over which it has control. There is no provision for joint liability under either the California Water Code or the Clean Water Act.	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>The Board does not agree with the comment. All persons who discharge any pollutant to waters of the United States must obtain an NPDES permit. (<i>See</i> 40 CFR § 122.21.) In this case, 86 entities are subject to the NPDES permits, and discharge to a common conveyance system and receiving waters. The Permit implements the requirements of the Clean Water Act, which require the dischargers to meet water quality standards to the “maximum extent practicable” and to comply with “such other provisions as the Administrator or the State determines appropriate for the control of such discharges” and to prohibit discharges of non-stormwater to the MS4, with certain conditional exceptions. Permittees are responsible for complying with the permit. (<i>See</i> 40 C.F.R. § 122.41(a) [“Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.”].)</p> <p>The permit covers a large geographic area. Permittees that discharge to a common outfall where the discharges commingle in the receiving water may be responsible for violations of the receiving water limitations. Once the Board determines that there is a violation of the receiving water limitations, or other conditions of the permit, based on monitoring reports and/or other information, it is up to the permittee to demonstrate that they are not responsible for the specific violation. The permit sets forth methods for a discharger to demonstrate that they are not responsible. The dischargers are responsible for complying with the terms of the permit; they cannot use another commingled discharger to shield themselves from responsibility for the discharge where they provide no</p>	None

			<p>information to show that they did not cause or contribute to the discharge. This view is consistent with the Clean Water Act which imposes strict liability and requires dischargers to establish and maintain records, sample and monitor discharges and report the results to the Water Board. (See, e.g., 33 U.S.C. § 1318(a); 40 C.F.R. § 122.41(j); 122.48 & 123.5.) This system of self-reporting is critical to the NPDES program, which “fundamentally relies” upon it. (See <i>U.S. v. Brittain</i> (10th Cir. 1991) 931 F.2d 1413, 1416.) In addition, the federal regulations contemplate that co-permittees will be responsible for developing management programs and controls involving inter-governmental coordination to reduce the discharge of pollutants (40 C.F.R. § 122.26(d)(2)(iv)), must agree to accept roles and responsibilities necessary to ensure effective coordination (40 C.F.R. § 122.26(d)(2)(vii)); and must have legal authority and agreement with other dischargers to control contribution of pollutants from one portion of the MS4 to another (40 C.F.R. § 122.26(d)(2)(i)(D)). The Clean Water Act puts the onus on the permittee to have sufficient control over its system to prevent discharges that are not compliant. (See, e.g., 40 C.F.R. § 122.26(d)(2)(iv)(B)(3) [application for permit must show how permittees will investigate any part of their system with a reasonable potential for contributing pollutants into the system from other sources].)</p> <p>The Clean Water Act and applicable regulations set up a system that is consistent with the application of joint and several liability in nuisance actions. It is initially up to the harmed party to provide proof of the harm. Where a party asserts that they are not responsible for the harm, or it can be apportioned, the party must provide proof of the apportionment of the harm. (See, e.g., Restatement (Second) of Torts § 433B. 433A.) In addition, the Restatement states that damages for harm are to be apportioned among two or more causes where there are distinct harms or there is a reasonable basis for determining the contribution of each cause to a single harm.)See, e.g., Restatement (Second of Torts, §433A.)</p>	
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			The Board agrees, however, that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are operators. So, for example, one co-permittee is not required to implement or correct best management practices employed by another co-permittee. (See, 40 CFR § 122.26(a)(3)(vi).)	
Joint Responsibility	The issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.	Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village	The federal regulations contemplate that co-permittees will be responsible for developing management programs and controls involving inter-governmental coordination to reduce the discharge of pollutants (40 C.F.R. § 122.26(d)(2)(iv)), must agree to accept roles and responsibilities necessary to ensure effective coordination (40 C.F.R. § 122.26(d)(2)(vii)); and must have legal authority and agreement with other dischargers to control contribution of pollutants from one portion of the MS4 to another (40 C.F.R. § 122.26(d)(2)(i)(D)). The Clean Water Act puts the onus on the permittee to have sufficient control over its system to prevent discharges that are not compliant. (See, e.g., 40 C.F.R. § 122.26(d)(2)(iv)(B)(3) [application for permit must show how permittees will investigate any part of their system with a reasonable potential for contributing pollutants into the system from other sources].) The TMDLs for bacteria address coordination between permittees.	None
Joint Responsibility	For receiving water body exceedances, the Permit should specify that the burden is on the Regional Board to show that any permittee's discharge caused or contributed to that exceedance. Requiring permittees to prove they did not cause or contribute an exceedance is both inequitable and unlawful. Permittees should not be required to prove they did not do something when the Regional Board has failed to	Cities of Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village	Permittees that discharge to a common outfall where the discharges comingle in the receiving water may be responsible for violations of the receiving water limits. Once the Water Board determines that there is a violation of the receiving water limits, or other conditions of the permit, based on monitoring reports and/or other information, it is up to the permittee to demonstrate that they are not responsible for the specific violation. The permit sets forth methods for a discharger to demonstrate that they are not responsible. The dischargers are responsible for complying with the terms of the permit; they cannot use another commingled discharger to shield themselves from responsibility for the discharge where they provide no information to show that they did not cause or contribute to the discharge. This view is consistent with the	None

	raise even a rebuttable presumption that the contamination results from a particular permittee's actions.		Clean Water Act which imposes strict liability and requires dischargers to establish and maintain records, sample and monitor discharges and report the results to the Water Board. (See, e.g., 33 U.S.C. § 1318(a); 40 C.F.R. §122.41(j); 122.48 & 123.5.) This system of self-reporting is critical to the NPDES program, which “fundamentally relies” upon it. (See <i>U.S. v. Brittain</i> (10th Cir. 1991) 931 F.2d 1413, 1416.)	
Joint Responsibility	Requiring a permittee involved in a comingled discharge to prove it did not cause or contribute to an alleged exceedance violates basic tenants of due process of law and is fundamentally unenforceable. Under both the CWA and the Porter-Cologne Act, the Board has the burden of proofing liability against an individual Permittee, regardless of whether or not there is a comingled exceedance. There is no such thing as "presumed," nor joint and several liability under either the CWA or the Porter-Cologne Act. The concept of "presumed guilt" is not an accepted principle of justice within the American System of Jurisprudence, and violates basic tenants of due process of law, plain statutory requirements and well-established precedent, to presume a Permittee is in violation of the Permit and subject to penalties wherever there is a comingled exceedance. As such, all such	City of Signal Hill	<p>The Board does not agree with the comment. All persons who discharge any pollutant to waters of the United States must obtain an NPDES permit. (See 40 CFR § 122.21.) In this case, 86 entities are subject to the NPDES permits, and discharge to a common conveyance system and receiving waters. The Permit implements the requirements of the Clean Water Act, which require the dischargers to meet water quality standards to the “maximum extent practicable” and to comply with “such other provisions as the Administrator or the State determines appropriate for the control of such discharges” and to prohibit discharges of non-stormwater to the MS4 system, with certain conditional exceptions. Permittees are responsible for complying with the permit. (See 40 C.F.R. § 122.41(a) [“Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.”].)</p> <p>The permit covers a large geographic area. Permittees that discharge to a common outfall where the discharges comeingle in the receiving water may be responsible for violations of the receiving water limits. Once the Board determines that there is a violation of the receiving water limits, or other conditions of the permit, based on monitoring reports and/or other information, it is up to the permittee to demonstrate that they are not responsible for the specific violation. The permit sets forth methods for a discharger to demonstrate that they are not responsible. The dischargers are responsible for complying with the terms of the permit; they cannot use another comingled discharger to shield themselves from responsibility for the discharge where they provide no information to show that they did not cause or contribute to the discharge. This view is consistent with the Clean Water Act</p>	None

	<p>terms must be deleted from the Proposed Permit.</p>		<p>which imposes strict liability and requires dischargers to establish and maintain records, sample and monitor discharges and report the results to the Water Board. (<i>See, e.g.</i>, 33 U.S.C. § 1318(a); 40 C.F.R. §122.41(j); 122.48 & 123.5.) This system of self-reporting is critical to the NPDES program, which “fundamentally relies” upon it. (<i>See U.S. v. Brittain</i> (10th Cir. 1991) 931 F.2d 1413, 1416.)</p> <p>In addition, the federal regulations contemplate that co-permittees will be responsible for developing management programs and controls involving inter-governmental coordination to reduce the discharge of pollutants (40 C.F.R. § 122.26(d)(2)(iv)), must agree to accept roles and responsibilities necessary to ensure effective coordination (40 C.F.R. § 122.26(d)(2)(vii)); and must have legal authority and agreement with other dischargers to control contribution of pollutants from one portion of the MS4 to another (40 C.F.R. § 122.26(d)(2)(i)(D)). The Clean Water Act puts the onus on the permittee to have sufficient control over its system to prevent discharges that are not compliant. (<i>See, e.g.</i>, 40 C.F.R. § 122.26(d)(2)(iv)(B)(3) [application for permit must show how permittees will investigate any part of their system with a reasonable potential for contributing pollutants into the system from other sources].)</p> <p>The Clean Water Act and applicable regulations set up a system that is consistent with the application of joint and several liability in nuisance actions. It is initially up to the harmed party to provide proof of the harm. Where a party asserts that they are not responsible for the harm, or it can be apportioned, the party must provide proof of the apportionment of the harm. (<i>See, e.g.</i>, Restatement (Second) of Torts §§ 433B, 433A.) In addition, the Restatement states that damages for harm are to be apportioned among two or more causes where there are distinct harms or there is a reasonable basis for determining the contribution of each cause to a single harm. (<i>See, e.g.</i>, Restatement (Second) of Torts, § 433A.)</p>	
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			The Board agrees, however, that co-permittees need only comply with permit conditions relating to discharges from the MS4 for which they are operators. So, for example, one co-permittee is not required to implement or correct best management practices employed by another co-permittee. (See, 40 CFR § 122.26(a)(3)(vi).)	
Joint Responsibility	The definition of “joint responsibility” is potentially internally contradictory and should be clarified to ensure compliance with existing waste load allocations and other Clean Water Act requirements. Finding J.1. should be revised to be consistent with Part IV.E.2.b.ii. that it is the Permittee who must show its discharge is not responsible for causing or contributing to an exceedance. The Board should also explicitly state that it is a Permittees’ responsibility to address any contribution to an exceedance, not only exceedances for which they are solely responsible.	Environmental Groups	Permittees that discharge to a common outfall where the discharges comingle in the receiving water may be responsible for violations of the receiving water limits. Once the Board determines that there is a violation of the receiving water limits, or other conditions of the permit, based on monitoring reports and/or other information, it is up to the permittee to demonstrate that they are not responsible for the specific violation. The permit sets forth methods for a discharger to demonstrate that they are not responsible. The dischargers are responsible for complying with the terms of the permit; they cannot use another commingled discharger to shield themselves from responsibility for the discharge where they provide no information to show that they did not cause or contribute to the discharge. This view is consistent with the Clean Water Act which imposes strict liability and requires dischargers to establish and maintain records, sample and monitor discharges and report the results to the Board. (See, e.g., 33 U.S.C. § 1318(a); 40 C.F.R. §122.41(j); 122.48 & 123.5.) This system of self-reporting is critical to the NPDES program, which “fundamentally relies” upon it. (See <i>U.S. v. Brittain</i> (10th Cir. 1991) 931 F.2d 1413, 1416.)	None
<i>RWLs Addressed by a TMDL</i>				
Receiving Water Limitations Addressed by a TMDL	While it is not the Board’s intention, Part VI.E.2.c.iii. would open Permittees up to third-party lawsuits. Therefore, the reference to a TSO should be replaced with the Watershed Management Program.	County of Los Angeles (Comment 121)	This portion of the permit addresses TMDLs where compliance deadlines have passed. The Regional Board may not include a compliance schedule in the permit, but consistent with the Water Code may provide a TSO to provide additional time to comply.	None
<i>Final QBELs and/or RWLs</i>				
Final	Final waste load allocations	Cities of Agoura	The Regional Board adopted TMDLs in accordance with	None

<p>WQBELs and/or RWLs</p>	<p>should not be incorporated into the Permit, especially for TMDLs that have been rushed through due to the Browner consent decree with the understanding that they would be refined over time with reopeners as new information becomes available.</p>	<p>Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, South El Monte, and Westlake Village</p>	<p>applicable laws and must incorporate those TMDLs into the permit. If TMDLs are reopened and implementation plans change, the permit may be reopened to make appropriate revisions.</p>	
<p>Final WQBELs and/or RWLs</p>	<p>The County and the LACFCD are concerned that final WLAs for State-adopted TMDLs have been incorporated as numeric effluent limitations that apply at the point of discharge from the MS4 and, where applicable, as receiving water limitations. The more appropriate approach is to incorporate interim and final WLAs as BMP-based effluent limitations defined as TMDL Control Measures required in the Watershed Management Program.</p>	<p>LACFCD (Comments 15 & 35); County of Los Angeles (Comments 11 & 122)</p>	<p>Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are appropriate to protect water quality. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.). Compliance with the TMDLs is necessary to achieve compliance with water quality standards.</p> <p>USEPA has stated 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." (See, e.g., Phase II Stormwater Regulations, Final Rule, 64 Fed. Reg. 68722, 68737 (addressing small MS4s).) USEPA has set forth in guidance regarding MS4 permits, that such permits must require compliance with applicable TMDLs to meet water quality standards. See “Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Requirements Based on Those WLAs." USEPA Office of Water, Nov. 10,</p>	<p>None</p>

			2010.	
Final WQBELs and/or RWLs	<p>It is an abuse of discretion to express final TMDL WLAs as strict numeric WQBELs and/or RWLs in the permit. The Board has not demonstrated that it is feasible to reflect the final WQBELs as numeric limits. In addition, the Board has not demonstrated that compliance with numeric WQBELs or WLAs is feasible. The Board also has not analyzed the costs of complying with TMDLs, including during the TMDL development process. The Board also did not analyze whether the means to comply with the TMDLs were cost-effective. The permit should be revised to implement final TMDL WLAs using BMPs. Alternatively, the Board should insert a new section VI.E.2.e.ii. that states: “Two years before the compliance deadline for an applicable final water quality-based effluent limitation and/or final receiving water limitation, Regional Board shall evaluate progress made by Permittees toward compliance with the standard, including review of the results from Permittees’ adaptive management process (VI.C.6.), to determine whether the compliance timeline should remain unchanged, or if the</p>	LACFCD (Comment 36); County of Los Angeles (Comment 123)	<p>The Regional Board does not agree that it is an abuse of discretion to express final TMDL WLAs as numeric WQBELs. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.) The Regional Board does agree that in certain circumstances it should consider whether implementation of BMPs is sufficient to achieve compliance with the TMDL WLAs. The tentative permit has been revised to provide for review two years before the final compliance deadlines to evaluate whether a BMP based approach to final WQBELs is supportable.</p>	Revision made to part VI.A.7.a

	Order should be revised to incorporate a new compliance timeline.”			
Final WQBELs and/or RWLs	Los Angeles Region MS4 dischargers should not be held to enforceable numeric effluent limits when discharges into the MS4, such as from Caltrans and construction sites, are not being held to the same standard.	LACFCD (Comment 36); County of Los Angeles (Comment 123)	The tentative permit incorporates TMDLs, including numeric WQBELs where feasible to implement the TMDL WLAs. Such provisions are appropriate to control the pollutants subject to the TMDLs. (See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166.).	None
Final WQBELs and/or RWLs	It is an abuse of discretion for the Permit to contain WQBELs and WLAs that are applicable after the expiration of the Permit. The fact sheet and draft Permit contain no reason for doing so. It is also not good policy, as it could restrict the flexibility of the Board and the Permittees to address these matters in subsequent permits. LACFCD recommends deleting all references to final WQBELs or final WLAs that are not applicable until after the five year termination date of the permit.	LACFCD (Comment 37); County of Los Angeles (Comment 124)	The Regional Board does not agree that it is an abuse of discretion to include numeric WQBELs that are applicable after the expiration of the permit. See <i>Defenders of Wildlife v. Browner</i> (1999) 191 F.3d 1159, 1166. The permit is required to implement the TMDLs, including the implementation plans. The Board and the permittees flexibility is not limited since the permit includes appropriate reopeners and those final WQBELs are not enforceable during the term of this permit.	None
<i>USEPA Established TMDLs</i>				
USEPA TMDLs	Part VI.E.3 illegally exempts permittees from complying with numeric WLAs established in USEPA adopted TMDLs. This violates 40 CFR § 122.44(d)(1)(vii)(B), which requires that NPDES permits be consistent with existing, applicable WLAs. Because TMDLs established by USEPA	Environmental Groups	Clean Water Act section 402(p)(3)(B)(iii) requires permits for discharges from municipal storm sewers to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design, and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i> ” [Emphasis added.] The Clean Water Act provides the Regional Board, to the same extent as the Administrator of USEPA, the discretion to determine what controls are	None

	include numeric WLAs, the permit must include numeric WQBELs consistent with those WLAs. Permittees must be required to comply with all existing, applicable WLAs, regardless of the adopting agency.		appropriate to protect water quality. See <i>Defenders of Wildlife v. Browner</i> , 191 F.3d 1159, 1166 (1999). Compliance with the TMDLs is necessary to achieve compliance with water quality standards but inclusion of numeric WQBELs is not required.	
USEPA TMDLs	<u>Section VI.E.3.c.iv.1 USEPA Established TMDLs and all VI.E.3 on Pg. 115</u> Conditions for compliance with Section VI.E.2.e.i.1-3 should apply to show compliance with EPA-Established TMDLs.	City of Malibu	The conditions in Part VI.E.2.e.i. apply to all TMDLs – both those adopted by the State and those established by USEPA.	None
Interaction between minimum control measures and watershed management program for USEPA Established TMDLs	It is not clear from the permit whether the intent is for cities such as Norwalk, which are subject to a USEPA TMDL, to be given the option of implementing the Minimum Control Measures (as all other Permittees are) or developing a Watershed Management Program. Paragraph VI.E.3.a (p. 114) appears to require cities subject to USEPA TMDLs to use only the Watershed Management Program option, which conflicts with Paragraph VI.C.1.b (p. 45) where "participation in a Watershed Management Program is voluntary..."	City of Norwalk	Permittees do not have to participate in a WMP, however, where a Permittee is subject to an EPA established TMDL, the WMP provides a mechanism for demonstrating compliance with the numeric WLAs assigned to the Permittee. If a Permittee does not elect to develop a WMP, it may alternatively demonstrate compliance with the numeric WLAs directly through monitoring data collected through the MRP.	None
<i>State Adopted TMDLs where Final Compliance Deadlines have Passed</i>				
State Adopted TMDLs where	There is no evidence that Permittees can comply with	LACFCD (Comment 38);	There is only a small subset of the 33 TMDLs for which final compliance deadlines have passed, and only three of these are	None

final compliance deadlines have passed	final WLAs set forth in those TMDLs whose final compliance dates have passed. Also, at the time the TMDLs were adopted, there was no evidence submitted that the TMDLs could be reached on the adopted, final compliance dates. If the Board is going to require compliance with state adopted TMDLs where the final compliance deadline has passed, then the Board should require compliance through implementation of BMPs whether than numeric effluent limits. LACFCD recommended new language.	County of Los Angeles (Comment 125)	significant in terms of MS4 discharges. In all three cases, the final deadlines that have passed are related to non-storm water discharges from the MS4, not storm water discharges. The CWA requires that non-storm water discharges through the MS4 are effectively prohibited to the extent that they are a source of pollutants to receiving waters. Furthermore, these final deadlines occurred between 3½ to 6 years ago in most cases. Additionally, Permittees have been on notice since 2006 regarding the manner in which these TMDL requirements would be incorporated into the permit. The LA County MS4 Permit was reopened in 2006 and again in 2007 to include these very requirements. Further, a TSO would provide additional time to comply, where justified, rather than requiring immediate compliance with the final WQBELs.	
State Adopted TMDLs where final compliance deadlines have passed	Should the TSO option remain, allow Permittees at least 3 months from the date of the Permit adoption to request a TSO.	County of Los Angeles (Comment 126)	The time line for submittal of a TSO is 45 days after the adoption of the permit so that the requests for TSOs will be received prior to the effective date of the permit.	None
State Adopted TMDLs where final compliance deadlines have passed	The process to request a TSO and its approval by the Board can potentially last a long time. Should the TSO option remain, the Permittees should be considered in compliance with the applicable RWLs and/or WQBELs from the initiation of the application process to its final approval.	County of Los Angeles (Comment 127)	There is only a small subset of the 33 TMDLs for which final compliance deadlines have passed, and only three of these are significant in terms of MS4 discharges. In all three cases, the final deadlines that have passed are related to non-storm water discharges from the MS4, not storm water discharges. The CWA requires that non-storm water discharges through the MS4 are effectively prohibited to the extent that they are a source of pollutants to receiving waters. Furthermore, these final deadlines occurred between 3½ to 6 years ago in most cases. Additionally, Permittees have been on notice since 2006 regarding the manner in which these TMDL requirements would be incorporated into the permit. The LA County MS4 Permit was reopened in 2006 and again in 2007 to include these very requirements. The tentative permit provides a	None

			reasonable time to make the requests.	
State Adopted TMDLs where final compliance deadlines have passed	The draft Permit does not include any provisions for once TMDL limits are achieved. Language should be added to state that compliance monitoring will be discontinued when the subject waterbody is delisted from the Clean Water Act section 303(d) list.	County of Los Angeles (Comment 129)	Monitoring of pollutants addressed by a TMDL must continue to ensure that MS4 discharges continue to be controlled such that the applicable WQBELs and RWLs continue to be attained. However, the MRP allows for reductions in monitoring frequency in some situations subject to Executive Officer approval.	None
TSOs	<p>Rather than request a Time Schedule Order for State Adopted TMDLs where final compliance deadlines have passed, Permittees should have the option of revising the Watershed Management Plan to include the elements listed in VI.E.4.d. Some TMDL final compliance deadlines will fall near the end of the next permit term or once it has expired while the permit is still in effect because the LARWQCB has not adopted a new permit (as is the case right now). The Permittees would not have requested a TSO within 45 days of Permit adoption because at the time the Permittees were in compliance with the interim objectives.</p> <p>Strike the phrase “within 45 days of Order adoption”</p> <p>Add the additional language to the end of VI.E.b.:</p>	Peninsula Cities (Comment 33); South Bay Cities; City of Los Angeles (Comment 65)	<p>While the tentative order specifies a process for requesting a TSO for WQBELs where the final deadlines have already passed, according to Cal. Water Code section 13300, whenever the Los Angeles Water Board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the Board, including final WQBELs, the Board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements. It is therefore not necessary to change the tentative order.</p> <p>For all types of NPDES permits, compliance schedules included in permits must ensure that: (1) effluent limitations are “consistent with the assumptions and requirements of any available wasteload allocation” set forth in the TMDL; and (2) compliance with effluent limitations is achieved as soon as possible (40 CFR §§ 122.44(d)(1)(vii)(B) and 122.47(a)(1)). The compliance schedule must also have an enforceable endpoint and cannot be open-ended. In addition, Water Code sections 13263 and 13377 require that permits be consistent with water quality control plans. Therefore, the tentative order cannot specify a timeframe for achieving compliance that is longer than that provided for in the TMDLs adopted as basin plan amendments.</p>	None

	“or include the information listed in VI.E.4.d.i-vi in its Watershed Management Plan			
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