



# CITY OF WEST HOLLYWOOD

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## DEPARTMENT OF PUBLIC WORKS

July 23, 2012

Mr. Ivar Ridgeway  
Los Angeles Regional Water Quality Control Board  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Sent Via E-mail to [LAMS42012@waterboards.ca.gov](mailto:LAMS42012@waterboards.ca.gov)  
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### COMMENTS ON THE DRAFT LOS ANGELES COUNTY MS4 PERMIT CITY OF WEST HOLLYWOOD

Dear Mr. Ridgeway:

As a member of the LA Permit Group, the City of West Hollywood joins in the comments submitted to your office by that organization. In addition, the City of West Hollywood is providing the following additional comments on the Los Angeles County MS4 Permit.

1. Please update the Facility/Discharger Information for the City of West Hollywood (WDID# 4B190219001). Please replace all reference to Jan Harmon. Change the Facility Contact to: Sharon Perlstein, City Engineer, [sperlstein@weho.org](mailto:sperlstein@weho.org). The Mailing Address for the City of West Hollywood is still correct as 8300 Santa Monica Boulevard, West Hollywood, CA 90069-4314.
2. The timelines to develop new watershed management and monitoring programs are too short. The Ballona Creek Watershed Agencies have been working together for several years on the bacteria, metals and toxics TMDLs. Based on this past activity; we know a lot of lead time is required for the governing bodies to execute new Memorandums of Agreement (MOAs). This is particularly an issue because the agencies include the State of California (Caltrans), Los Angeles County, and City of Los Angeles, as well as five small cities. In addition to entering into MOA's the obligations may require securing funding, hiring consultants, etc. All of these activities take time and the timelines in the permit are short.
3. The requirements of the Outfall Based Monitoring are onerous. The Permit requires that "Storm water discharges from the MS4 shall be monitored at outfalls, manholes or in channels at the



Permittee's jurisdictional boundary." The storm drain system serving the City of West Hollywood is a network of underground pipes. There are no open channels or water bodies. The Permit does not provide a definition of "outfall." However, the Outfall Based Monitoring section uses this term to describe a program of sampling storm water at the entry and exit from a jurisdictional boundary. "Outfall" is not simply being used as a term to describe a location where a pipe discharges to an open channel or water body. Because the City of West Hollywood is surrounded on 3 sides by the City of Los Angeles and on one side by the City of Beverly Hills, the network of regional underground storm drains carries storm water flows into and out of the City of West Hollywood. In other words, the City does not have any traditional "outfalls" where storm water enters and exits the City.

For technicians to take samples from the underground storm drain system at the City of West Hollywood's borders, they will have to enter manholes during storm events, which creates significant logistic and safety issues, as the storm drain manholes are located in the middle of rain soaked arterial roadways. In the rain, technicians will need to set up traffic detours and conduct their sampling work, including compliance with Cal-OSHA safety requirements for confined space entry. Due to hydraulic grade line conditions, some storm drains flow under pressure during storms. It is unsafe to open these manholes to take samples. As such, the Outfall Based Monitoring needs to be amended to account for areas of the MS4 with no open channels or water bodies.

4. The Receiving Water Limitations Language must be amended. As written, the City can be deemed in violation of the permit, and vulnerable to costly citizen suits, even if it is acting in good faith to do everything in its power to correct exceedances. Stated differently, even though the RWQCB requires cities to implement an iterative process to improve BMPs to address exceedances, the City is still in violation of the permit during the iterative process. This was a serious defect in the last permit and it has not been remedied in this draft.

Previously, municipal storm water Permittees had understood that the receiving water limitations language in conjunction with Board Policy (WQ 99-05) established an iterative management approach *as a basis for permit compliance*. However, since the permit language does not actually say that the Permittee is in compliance while engaging in the iterative management process, a federal

court has determined that the permit violation still exists while the Permittee is taking actions to address the problem.

On July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found that the Defendant County had violated the receiving water limitations, despite its compliance with the iterative management process. The Court said that the obligation to not cause or contribute to a violation of receiving water limitations is separate and distinct from the obligation to participate in the iterative management process. Thus, a municipality is in violation of the permit if its discharges cause or contribute to an exceedance of a water quality standard, even while improving its management practices and control measures. This is a fundamental change in interpretation of policy. The Court's decision also contrasts sharply with the Board's own understanding as expressed in a 2002 letter from then-Chair Diamond answering questions about the 2001 MS4 Permit in which she articulated the collective understanding that a violation of the permit would occur only when a municipality fails to engage in good faith effort to implement the iterative process to correct the harm.

An MS4 permittee should not automatically be in violation of the permit if there is an exceedance; the exceedance may not have even been caused from an MS4 discharge. The permit must acknowledge that MS4 discharges are not the only source of pollutants in the water and regulate accordingly. If monitoring demonstrates that a particular compliance strategy is not working through no fault of the discharger, then the discharger must have time to identify and implement a new strategy before being held liable for water quality alterations that may be beyond its control.

To address this problem, the City recommends that the proposed CASQA language submitted by the LA Permit Group be used in lieu of the current language.

5. The final TMDL Waste Load Allocations (WLAs) do not allow compliance to be demonstrated through implementation of BMPS that provide reasonable assurances that WLAs are met. Implementing the City's storm water control measures will meet interim guidelines, which are often based on the number and thoroughness of implementation measures. But final TMDL limits require compliance with strict numerical water quality standards (effluent limits) either at the end of the pipe or in receiving waters


when final compliance is due. For many reasons, these will be difficult to meet. For instance, there can be an impact by natural sources upon bacterial levels because the Ballona Creek watershed's Del Rey Lagoon, Ballona Wetlands, and Ballona Creek Estuary are non-point sources for bacteria loading and are tributary to monitoring sites. Also, the permit proposes that if the final compliance period has already passed when the permit is adopted, that the City must submit a Time Schedule Order (TSO) setting out a compliance plan. Similar to the iterative process described above, submittal of a TSO and implementing a compliance plan does not shield the City from citizen suits, and may increase the risk of legal liability *while the City is implementing its compliance schedule*. This is a problem that needs to be addressed.

6. Lastly, while we appreciate the access and opportunity that Board staff provided to the Permittees during the time that this draft permit was under development, and the opportunity to provide input, significant issues remain unresolved and many more have become evident now that this draft permit has been released in its entirety. A forty-five day review period for a 500-page permit is hardly adequate and has not provided us enough time to fully review and digest all the interrelated parts of this permit, to consider the implications and costs of the proposal, and provide complete and comprehensive comments.

We appreciate the opportunity to provide these comments and urge the Board to review the comments provided by all of the Permittees, issue a revised draft permit, and accept additional comments on the revised draft before adopting a final permit.

Please feel free to contact me at (323) 848-6383 if you have any questions regarding the City of West Hollywood's comments.

Sincerely,

  
Sharon Perlstein, P.E.  
City Engineer