

Comment Letters Received from Other Entities

- CONTECH Engineered Solutions
- Joyce Dillard
- National Fire Sprinkler Association
- Wildan Engineering

April 13, 2012

Renee A. Purdy; Chief
Regional Programs Section
Los Angeles Regional Water Quality Control Board

Subject: Comments on Staff Working Proposal – Los Angeles Region MS4 Permit

Dear Ms. Purdy,

Thank you for the opportunity to comment on the staff working proposal of the minimum control measure section of the Greater Los Angeles County MS4 Permit. As written, the proposal does incorporate key components of a low impact development based approach to stormwater management, but could be improved significantly in ways that more directly speak to the local needs of Los Angeles County. This letter contains specific recommendations for improving the draft permit in four areas:

- Treat rainwater as a resource by making BMPs that retain rainwater for future use within the watershed and within a reasonable time frame the most preferred post construction stormwater management approach
- Provide incentives for retrofit of the built environment to accelerate TMDL compliance
- Lower feasibility thresholds for Green Infrastructure BMPs to encourage their use
- Remove prescriptive post construction BMP design guidance from the permit and replace with clear performance standards

Treat Stormwater as a Resource

Los Angeles County is a net importer of water from as far away as the Sacramento Bay Delta and the Colorado River. This reliance on external sources of potable water is unsustainable and expensive compared to tapping local supplies. Conservation is a crucial component of our local water security plan, but thriving landscapes of native plants are also important for habitat, temperature buffering, recreation and aesthetics. Landscapes do require water as do buildings, cooling systems, fire suppression systems. The Los Angeles County permit should drive project proponents toward designs that capture rainwater and use it within the watershed as the top priority. Such an approach is consistent with the EPA definition of LID which states that "LID employs principles... that treat stormwater as a resource rather than a waste product."¹

Recommendation:

The current hierarchy of management approaches should be revised as follows:

- 1. Most Preferred: Rainwater capture for beneficial use (i.e. rainwater harvest for indoor non-potable use, irrigation and other uses that offset potable water demand) or infiltration to groundwater where that water will be recovered in a reasonable amount of time (<5 years) either on site or in regional facilities within the same watershed**
- 2. Second Tier – Retention of water on site or off site through infiltration where that water will not be available for extraction within a reasonable time frame (>5 years)**
- 3. Third tier – Biofiltration through amended soils designed to produce at least a 90% reduction in TSS, 50% Phosphorus reduction, 50% reduction in soluble Zinc and 40% reduction in soluble copper. Where feasible these systems should allow incidental infiltration and should incorporate an anoxic subsurface storage zone for nitrogen removal.**

¹ From: <http://www.epa.gov/owow/NPS/lid/>

The current proposal does include the first tier option of discharging treated water from a site to a regional collection facility which is commendable. Operation and maintenance can be much more reliable and economical at regional facilities compared to on-site LID facilities which have been documented to have very high (~50%) failure rates within the first few years of operation due to improper construction and/or maintenance. In Los Angeles where nearly all developable land is already developed, regional facilities can typically retain runoff at a much lower cost. Recovery and distribution of captured water, through groundwater extraction or direct treatment and use of stormwater runoff can also be more cost effective per gallon recovered compared to small scale decentralized facilities.

Onsite infiltration of water also makes sense where it does not cause structural or pollutant transport issues. However, infiltrating water onsite where that infiltrated water has no connection to larger groundwater tables squanders our rainfall resources. It would be better to capture and store that water for later use to offset potable water demand.

Retrofit of built environment

With approximately 1% of the Los Angeles County area being developed annually, even the most stringent regulation of new development and redevelopment during the permit term will probably not make significant progress toward restoring beneficial uses of our rivers, streams and bays. The numerous TMDLs set to be incorporated into the permit are evidence that the region has significant unresolved problems that are the result of existing development. Understandably, retrofit of the built environment is a difficult proposition financially and politically. Retroactive requirements for existing land owners would be extremely unpopular especially in the current climate of depreciating real estate values. However, the owners and operators of MS4s in the County will be responsible for ultimately meeting load allocations set in those TMDLs. This permit should provide clear requirements for identification, prioritization and initiation of municipal redevelopment projects that compliment current efforts like Los Angeles River revitalization planning and Integrated Regional Water Management Planning. It should also incentivize redevelopment of private property. The alternative mitigation program is one opportunity to do this.

Recommendation:

Within each watershed, retrofit projects should be initiated that preferably harvest and use rainwater either through cistern type systems or through recharge of recoverable groundwater systems. At a minimum these projects should retain water on site. These projects should be initiated as soon as possible, with ongoing monitoring of the actual water harvest and runoff reduction amounts. Where projects in the same watershed enroll in the alternative compliance program due to infeasibility of on-site retention, an alternative compliance fee paid by the developer would be applied toward constructed project costs as a rebate to the funders of those projects. Projects enrolling in the alternative mitigation program must still provide adequate treatment for the portion of the design storm that leaves the project site. The permit should specify a minimum number of new redevelopment projects or a minimum retention volume per watershed to be completed within the permit term.

Eliminate prescriptive BMP design requirements and strengthen performance standards

Government and private industry work together best when clear, progressive performance standards are set by government and private industry is challenged to innovate to create the most cost effective and desirable means of achieving those standards. This permit clearly establishes retention of the 85th percentile design storm as the top tier performance standard. Where that is infeasible, biofiltration is allowed. However, there are no performance objectives given for biofiltration in terms of a pollutant load reduction required or a volume of annual runoff to be reduced. Presumably these are exactly the benefits that prescriptive design requirements regarding storage volume, incidental infiltration, media depth are intended to produce. The lack of a clear performance standard in combination with design requirements virtually eliminates the opportunity for innovation. These design details should be given in a technical

manual to accompany the permit, but as suggested, not required methods of satisfying permit requirements. Engineers must also be given the option to select a different design that has been demonstrated to provide equivalent performance. There are several nationally recognized stormwater BMP verification programs that can serve as independent auditors of system performance.

Recommendation:

Prescriptive BMP design requirements should be stripped from the permit and should be collected in a technical guidance manual to be completed after permit adoption. For each tier of preference, the permit must articulate specific, measurable performance standards relating to pollutant load reduction and runoff reduction.

Lower feasibility thresholds for Green Infrastructure BMPs to encourage their use

Green infrastructure BMPs are a subset of BMPs that infiltrate, evapotranspire or harvest stormwater on-site. In Los Angeles, there are many sites where retention of the entire water quality volume will not be feasible. The current draft appears to set a feasibility threshold of 100% capture of the SWQDv for each technology which is far too high. Setting the feasibility threshold at 40% annual capture for infiltration and rainwater harvest would encourage more widespread implementation of these BMPs. The rainwater harvest feasibility threshold should be modeled after the Orange County Technical Guidance Document² guidance which requires consideration of the 30 day demand on site and allows water to be applied to the landscape at the native soil infiltration rate instead of the agronomic demand of the landscape vegetation. Feasibility criteria for the various BMPs do not need to be included in the Permit, but should be detailed in an accompanying technical manual.

Recommendation:

Set the feasibility threshold for green infrastructure BMPs at 40% annual runoff capture. Require consideration of the 30 day non-potable water demand on site for rainwater harvesting system feasibility assessment. Allow captured rainwater to be delivered to the landscape at up to the native soil infiltration rate.

With these changes, the proposal will be more protective and more tailored to the unique conditions of Los Angeles County. I would welcome the opportunity to review them in more detail at your convenience. In addition, attached is a summary of specific language change recommendations that address other important issues. I look forward to reviewing the draft permit in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read "Vaikko", written over a horizontal line.

Vaikko Allen, CPSWQ, LEED-AP
Regulatory Manager- Stormwater
CONTECH Construction Products Inc.
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² Available at: <http://www.ocwatersheds.com/WQMP.aspx>

July 23, 2012

Renee A Purdy; Chief
Regional Programs Section
Los Angeles Regional Water Quality Control Board

Subject: Comments on Draft Los Angeles Region MS4 Permit

Dear Ms. Purdy,

Thank you for the opportunity to comment on the draft MS4 permit for the Los Angeles region. It is encouraging to see the progress on this draft permit, in particular the incorporation of watershed planning and TMDL compliance sections. My comments primarily focus on the following four issues:

- Biofiltration definition and design requirements
- Performance criteria for new development treatment BMPs
- Rainwater harvest and use feasibility criteria
- Trash TMDL compliance

Biofiltration definition and design requirements

The incorporation of incidental infiltration is used in this permit to differentiate between biofiltration which can be used to fulfill on-site mitigation requirements where full retention of the SWQDv is not feasible, and planter boxes which cannot. Aside from the presence of incidental infiltration, planter boxes and biofiltration BMPs may be designed identically per the standards in Attachment H. The permit states that incidental infiltration is critical to meeting the required pollutant load reduction, yet no pollutant load reduction target is given and likely significance of incidental infiltration is not assessed. Given the fact that biofiltration can only be used where native soil infiltration rates are less than 0.15 inches per hour, the portion of the design storm that will be lost to infiltration is likely to be very low. For example, a biofilter designed following current Attachment H guidance, assuming a native soil infiltration rate of 0.1 inches per hour and a factor of safety of 4 would infiltrate about 4% of the 0.75 inch design storm. This is not an appreciable flow rate or volume reduction and considering that biofilter pollutant removal performance is very high for most common pollutants, it will not result in an appreciable pollutant load reduction. This distinction should be removed and planter boxes should be allowed as an acceptable means of on-site treatment under the "Alternative Compliance Measures" pathway provided in the permit. In order to prioritize the use of free draining systems, a simple statement requiring that incidental infiltration be allowed where feasible would suffice.

The biofiltration definition currently includes bioswales which are among the least effective BMPs for trash, sediment, nutrients and bacteria control according to an International BMP Database summary report¹. Swale performance is a reflection of the fact that the primary treatment mechanism is gravitational settling and filtration through vegetation as water flows to the outlet of the swale. Infiltration and filtration through soil is

¹ International Stormwater Best Management Practices (BMP) Database. (2011) BMP Performance Data Summary Table. Retrieved at: <http://www.bmpdatabase.org/Docs/BMP%20Database%20Tabular%20Summary%20November%202011.pdf>

incidental. Bioswales are "flow through" treatment systems designed to convey a water quality flow rate, not to capture a runoff volume. In bioretention and planter boxes, treatment mechanisms are fundamentally different. They are designed to treat the design storm volume and runoff is filtered through at least 18" of amended soils prior to discharge. To allow bioswales as a biofiltration BMP but to exclude the much more effective planter box is indefensible.

Performance Criteria for new development treatment BMPs

The permit currently requires that treatment control BMPs be designed to treat the stormwater quality design volume prior to release on sites pursuing off-site mitigation due to technical infeasibility. The "Water Quality Mitigation Criteria" in Table 11 are given as benchmarks applicable to treatment BMPs. The benchmarks appear to be the lowest effluent achieved by any BMP for each pollutant based on a summary report from the International BMP Database as referenced in the Ventura MS4 permit attachment C. That attachment is copied below for your reference. The effect of picking the lowest achieved values for all parameters is that there is no one BMP that can achieve all benchmarks in Table 11. Subpart iv.(1) (a) on page 74 of the draft permit should be removed along with Table 11. This would leave adequate protection in place in as section iv would still ensure that treatment controls are as effective as sand filters and do not cause or contribute to water quality impairments.

Effluent Concentrations as Median Values

BMP Category	Total Suspended Solids (mg/L)	Total Nitrate-Nitrogen (mg/L)	Total Copper (µg/L)	Total Lead (µg/L)	Total Zinc (µg/L)
Detention Pond	27	0.48	15.9	14.6	58.7
Wet Pond	10	0.2	5.8	3.4	21.6
Wetland Basin	13	0.13	3.3	2.5	29.2
Biofilter	18	0.36	9.6	5.4	27.9
Media Filter	11	0.66	7.6	2.6	32.2
Hydrodynamic Device	23	0.29	11.8	5	75.1

Expected BMP pollutant performance for effluent quality was developed from the WERF-ASCE/U.S. EPA International BMP Database, 2007

Rainwater Harvest and use feasibility criteria

Rainwater harvest and use feasibility criteria are absent from this permit draft. Please refer to my previous comments (attached for your reference) on the Staff Working Proposal for suggestions regarding adoption of criteria that would encourage rainwater harvest in Los Angeles County.

Trash TMDL compliance

Trash control is required by multiple TMDLs in the Los Angeles region. Installation of full capture devices throughout the region has resulted in significant progress toward meeting implementation targets set in those TMDLs. However, compliance on paper and compliance in our receiving waters appear to be different targets. This permit must clearly define adequate maintenance of full capture BMPs such that accumulated trash does not cause bypass at rates less than the peak design treatment flow rate and such that previously captured trash is not resuspended during any storm. It is also important that credit given for partial capture

devices is proportional to their benefit. As written, it would be possible to achieve 100% trash removal credit if a street was swept just prior to a storm event even all trash in catch basins on that street was scoured out during the storm. This is unacceptable and must be corrected.

Summary

These changes will make the permit more consistent with contemporary California permits and will strengthen water quality protection. Attached is a list of specific comments, suggested changes and permit section references for your review. Thank you for considering them as you prepare for the next draft of this permit. Please contact me if you would like further discussion or clarification on any of the issues introduced here.

Sincerely,



Vaikko Allen, CPSWQ, LEED-AP
Director – Regional Regulatory Management
Contech Engineered Solutions LLC
vallen@conteches.com

Rodgers, Theresa@Waterboards

From: Joyce Dillard <dillardjoyce@yahoo.com>
Sent: Monday, July 23, 2012 11:55 AM
To: LAMS42012 LAMS42012
Subject: Comments to Draft Tentative Order Los Angeles County MS4 Permit due 7.23.2012
Noon

We question the accessibility and use of current scientific data for the areas presented. How were measurements taken, at what source points and at what intervals.

Is monitoring only to be taken into receiving waters or are outfalls more important in this permitting.

How do you determine if the permittee caused action into receiving waters if other permittees, such as Caltrans, may hold some responsibility. Is it location, location, location.

How are effluent maximums determined without any consideration to the General Plans and the Land Uses.

Even now, a Public Facilities land use designation may be multi-family housing with a commercial mixed use aspect such as with School property.

How can BMPs be determined to be effective without the proper planning, mapping, identification, listing of grandfathered properties and such.

What is the state of the underground infrastructure as required in the Circulation Element. You do not ask for the state mandated requirements for Public Health and Safety issues.

You have no requirements for weather reporting and history which is what stormwater is all about. With that, how is sediment management incorporated into limitations. How are fires incorporated into the limitations.

Watershed Management Areas may really be under the jurisdiction of municipalities who grant permits and entitlements and not under LA County's control.

This is where you are voiding CEQA and not allowing the public to participate and comments on issues of importance to their persons and their property.

The County Flood Control District is planning a vote-of property owners not of registered voters, to assess a parcel fee for Watershed Management Areas and their governance. Property owners include corporations and government agencies.

There is no vote of the People for elected representatives. The bill will go to the property owner, in perpetuity, for requirements not well planned and documented.

This disconnection will never achieve the reduction of pollutants into receiving waters because a financial aspect of mitigation banking will be created as offsets.

Not considered is the geology and soils, practices like fracking which the State Department of Oil, Gas and Geothermal DOGGR does not regulate, and remaining oil deposits, methane and other hazardous gases. No one knows the content of the fracking fluid that enters the system.

This agency is just too myopic in its scope of the problem.

This is a developers dream-no CEQA, no source point identification, no responsibility but to the taxpayer.

This is a contractors dream-projects without any required proof of productivity and benefit.

This is a oil company's dream because there is no oversight and accountability as to the use of water and its wasteproducts.

Is there any consideration for birds, fish and wildlife. Or water-born diseases that could kill out industries if mishandled?

Have you considered tidal flows and the Southern California Bight geography.

These generic methods of Best Management Practices BMPs need to be revised.

The Board, who are appointed and not elected, are approving a system that has no real solution and sets up a financing tool that should be established by elected officials with considerations of revenue and budgets.

You should be working with the Governor's Office of Planning and Research and create an effective system with measurable and documented results. This process should involve more than just one State agency.

This is about the Public Health and Safety after all.

Joyce Dillard
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July 23, 2012

Los Angeles County Regional Water District
Metropolitan Water District Headquarters
320 West Fourth Street Suite 200
Los Angeles, CA. 90013

Subject: Los Angeles County MS-4 Draft – Non-Storm Water Discharges

Dear Member of the Board,

The National Fire Sprinkler Association (NFSA) and the Los Angeles Chapter of the National Fire Sprinkler Association appreciate the opportunity to comment on the “Municipal Separate Storm Sewer System (MS4) Draft National Pollutant Discharge Elimination System (NPDES) Permit” for discharges within the Los Angeles County Flood Control District. It is our belief that this permit is a very positive development as it recognizes that Community Water Systems (CWSs) and Fire Departments (FDs) have legal obligation under both state and federal statute and regulation to discharge water for the protection of public health and safety. Our Associations support the regulatory accommodations provided in this permit which will allow CWSs, FDs, and MS4 Permittee’s to work together to resolve water quality problems rather than placing them a position where conflict would have resulted.

The National Fire Sprinkler Association and the Los Angeles Chapter of the National Fire Sprinkler Association support the stakeholders of this draft would like to offer the following comments:

Comment 1: Footnote 8 on the bottom of page 27.

We would recommend that the definition of potable water include the term “raw water”. While untreated water is not a common discharge, it does occur and some MS4 Permittee’s have expressed reservations about accepting this water unless it is explicitly spelled out in the permit.

8 Potable water distribution system releases means sources of flows from drinking water storage, supply and distribution systems (including flows from system failures **and raw water**), pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and minor non-invasive well maintenance activities not involving chemical addition(s) where not otherwise regulated by NPDES Permit No. CAG674001, NPDES Permit No. CAG994005, or another separate NPDES permit.

Comment 2: Top of Page 28, Clarification of the one acre-foot threshold hold.

As written, it is possible to interpret the one acre-foot threshold as applying only to the third measure, “record keeping”. We believe that the intent of the language is that all discharges greater than one acre-foot need to have all three of the noted actions taken. So we recommend that the text be re-written so that it is clearer that the threshold applies to all requirements. This should be done in Table 8 as well.

Additionally, each Permittee shall work with potable water suppliers that may discharge to the Permittee’s MS4 to ensure that all discharges greater than one-acre foot shall have: (1) notification at least 72 hours prior to a planned discharge and as soon as possible after an unplanned discharge; (2) monitoring of any pollutants of concern⁹ in the potable water supply release; and (3) record keeping by the potable water supplier. ~~for all discharges greater than one acre-foot.~~¹⁰

Comment 3: Footnote 9 at the bottom of Page 28

This footnote is difficult to interpret and contains analytes of marginal significance. We believe that it be consistent with Footnote 10 where the analysis of chlorine residual and pH are required. Further, the language used in this footnote makes more sense in Table 8 and as a result we propose the following changes.

⁹ Pollutants of concern include, at a minimum, ~~trash and debris, including organic matter, total suspended solids (TSS),~~ chlorine residual, pH, and any pollutant for which there is a water quality-based effluent limitation in Part V.I.E applicable to discharges from the MS4 to the receiving water.

Page 33, Table 8: ~~Segregate conditionally exempt non-storm water discharges from potential sources of pollutants to prevent introduction of pollutants to the MS4 and receiving water.~~

Essential Conditionally Exempt Non-Storm Water Dischargers (CENSWDs) must ensure flow path between discharge point and entrance to the MS4 (e.g. streets, gutters, swales) is free of trash and debris, organic matter, and potential sources of pollutants.

Comment 4: Page 29 III. DISCHARGE PROHIBITIONS 4 a ii:

We believe that this provision does to serve any purpose. If a local MS4 owner or operator requires a local permit, the MS4 permit does not need to require the Permittee to require that permit, it is already required. If the local MS4 owner or operator does not require a local permit, the MS4 permit does not change that. We propose that this provision be struck out entirely.

~~Obtains any local permits required by the MS4 owner(s) and/or operator(s);~~

Comment 5: Page 33, Table 8.

The provision for LACFCD to mandate reporting by potable water suppliers does not make sense. LACFCD has no legal mechanism to enforce this provision except where the discharge is to a County owned right of way, which is in only a very small number of cases. It makes much more sense and is consistent with the rest of the permit to require each MS4 Permittee to have this requirement.

Whenever there is a discharge of one acre-foot or more into the MS4, the ~~Los Angeles County Flood Control District~~ **MS4 Permittee** shall require advance notification by the discharger to the MS4 Permittee. ~~to the potentially affected MS4 Permittee's, including at a minimum the District and the Permittee with jurisdiction over the land area from which the discharge originates.~~

Comment 6: Page 29 Permittee Requirements.

This section makes frequent references to Table 8 which are BMPs for Non-Essential CESNSWD (except for the very first one which covers both Essential and Non-Essential CESNSWDs). However it is confusing as worded. The text could read...

Develop and implement procedures to ensure that a discharger, if not a named Permittee in this Order, fulfills the following non-storm water discharges to the Permittee's MS except as provided in III A 2 a i. and ii.

Comment 7: The Board may wish to consider using the terms Essential CENSWD and Non-Essential CENSWD for clarity's sake. It is difficult to discuss the provision of this permit without some sort of definitive terminology.

Sincerely,
Bruce Lecair, Southwest Regional Manager
National Fire Sprinkler Association

July 23, 2012

Mr. Sam Unger
Executive Officer
Regional Water Quality Control Board
Los Angeles Region
320 W 4th Street
Suite 200
Los Angeles, CA 90013

Attn: Ivar Ridgeway

Subject: Comments on the Proposed NPDES permit for Los Angeles County, Los Angeles County Flood Control District and 84 Incorporated Cities of Los Angeles County

Dear Mr. Unger:

Thank you and your staff for the opportunity to review and comment on the proposed NPDES permit noted above. As you have noted in your recent correspondence denying the Permittees request for additional time to negotiate the content of this permit, your staff has provided for interaction between the Permittees and the Board for at least six months. I wish that I could say that this communications was a two way street. As you note in your denial letter, staff did distribute working copies of most elements of the permit. Unfortunately, the working language comments were treated as a one way communication, in which the Cities could offer comments, but staff was not obliged to respond to those comments as would be the normal practice. The Cities made comments, that we believe to be constructive, and even met with staff to ensure that our concerns were understood by staff. But once those comment letter and meeting were held staff moved on to the next phase of permit preparation without providing any idea how our comments were going to be incorporated into the permit. In some cases staff did modify the permit to address our concerns, but in most cases the Cities have no idea why our comments have been ignored.

Now that the Proposed Permit language is distributed I think that I can safely say that the Permit as written cannot be implemented by 80 to 95% of the Co-permittees. I regret to say it this way, but the reality which the Regional Board and its Staff have chosen to ignore is that the economic conditions are driving Cities into Bankruptcy and those that are well managed are laying off many good people that will be needed to implement this permit. The Staff may believe that this permit is just a clarification of the previous permit and should not cost significantly more to implement, but a careful reading of this permit reveals the significance of the changes. I am going to try and list the issues in order as contained in the permit.

Section VI.A.3.a, States “**Each Permittee shall exercise its full authority to secure the financial resources necessary to meet all requirements of this Order.**” If you are an optimist this phrase is fairly simple, but in today’s legal atmosphere every City should be wary of this statement. First the “requirements of this Order” are staggering and expensive. Every level of Government is seeking every tax dollar that it can raise just to keep itself in the black. Not many

are succeeding. The State of California is facing a deficit of \$16,000,000,000 with a B, City like Los Angeles are faced with budget deficits of \$400,000,000 and even small cities are faced with the loss of \$2,000,000 due to the State shutdown of redevelopment. These numbers are real and I know that the Regional Boards have the same budget issues because of the State deficit. With the financial environment that we are in today to require cities to exercise their “full authority to secure financial resources to meet all requirements” is already a failure. So since we cannot comply with this provision of the Order the NGOs like Heal the Bay and the NRDC can file third party lawsuits against cities and the cities have no defense. They will be found guilty and fined by the Courts. This situation is already playing out for the cities along Santa Monica Bay. With the adoption of this new permit it will spread to all of the Cities covered by the permit.

The permit, starting at Section VI.C, proposes to offer the Cities away to make the permit more affordable by establishing a “**Watershed Management Plan**” that will allow Cities to join in an effort to establish watershed priorities for both the Minimum Control Measures and for the TMDL program. Under this program, Cities within a Watershed Management Area, defined in attachment B, will be allowed to offer an alternative program to that contained in the permit. While on the surface this sounds promising the reality is that the cities have to decide within six months if they are going to participate and then present the Watershed Management Plan (WMP) to the Regional Water Board Executive Officer no later than 12 months after the effective date of the permit. If two cities were interested in preparing a WMP and sharing the cost of the plan it may be possible to meet the schedule. However, for watersheds like the Los Angeles River Watershed, the task becomes impossible. There are 35 cities in the WMA and getting them to agree to share the cost within a six month period would be next to impossible. Add to that, the RFP process to hire the consultant that would be necessary to prepare a million dollar WMP, the cities would be luck to accomplish the hiring of the consultant within the one year period. So by default the Cities will be stuck complying with the provisions of Section VI.D.1.b.i, and must comply with the permit requirements within 30 days of the effective date of the Order.

If the WMP concept is to be meaningful the time for developing the WMP must be extended to two or three years so that reasonable deadlines can be imposed for decision making.

Section VI.D contains the **Minimum Control Measures**. These programs mostly follow the programs contained in the 2001 permit. If the programs were identical to those contained in the previous permit it would be easy to roll into these programs without problems. However, as the Regional Board staff has stated there is general dissatisfaction within the Board Staff and the NGO community on how the Cities have implemented and complied with the 2001 permit. So in an effort to obtain more compliance with the Minimum Control Measures (MCM) the Board staff has expanded these provisions to require new databases for tracking everything from Priority business, those that have a likelihood to discharge pollutants to the MS4, to tracking permits issued for projects that disturb an acre or more from the beginning of work through project completion. The Cities were required to track businesses under the 2001 version of the permit, but the data fields that the Board staff wants tracked under Section VI.D.5.b.ii, is more extensive and will require the creation of a new database to satisfy the permit. While the Permittees are likely to implement compliance with the MCM, **meeting the 30 day deadline is not possible.**



In addition, under the MCM program the Regional Board is imposing requirements that are likely to shut down the construction industry in the Los Angeles County area because new development or redevelopment projects must contain on site and infiltrate the increased runoff volume generated by the project. In some areas infiltration is not a problem while in other areas geotechnical reasons will preclude the use of infiltration. When runoff cannot be infiltrated on site the alternative either requires the City to identify a mitigation site or when there is no mitigation site projects cannot be approved. This requirement is contained in the Ventura County permit where there are many more mitigation sites available. In the densely developed Los Angeles County Area the Cost of land will either make mitigation impractical or mitigation will be very expensive.

The Regional Board must recognize that the MCM program is not the same as it was in the 2001 permit and that the Cities will need more than 30 days to implement the update programs.

The Regional Board has added 33 or 34 TMDLs to this permit as enforceable elements of the permit. The Los Angeles River Watershed has had two TMDLs that are moving forward in the implementation with a third approved and beginning the process of implementation. That leaves us with three TMDLs that affect watershed members differently. To add this volume of TMDLs to the permit at one time will impose a significant financial burden on the Cities. By your own estimates the Metals TMDL for the Los Angeles River Watershed will cost the cities 5 to 6 Billion Dollars to implement. As you have heard the City of Bradbury is faced with an annual cost of 1.2 Million Dollars per year to comply with the TMDL. Their budget is \$800,000 annually. This cost of implementation is unreasonable and should not be imposed on any agency. The Trash TMDL, and the Bacteria TMDL both are being implemented at this time and their prices tags will be significant, considering the cost of maintenance that will be ongoing forever.

The Regional Board must identify a source of funding that the Cities can depend on to offset these significant Capital and Maintenance costs.

The final financial burden that the proposed permit imposes is the monitoring and reporting program in attachment E to the permit. If I understand the Receiving water monitoring correctly that will remain the responsibility of Los Angeles County. In the same manner any other Regional monitoring program that exists will continue with the agency that is currently performing that monitoring. TMDL monitoring is a coordinated monitoring program so the costs are a shared cost based on plans that are submitted and approved by the Regional Water Board. The monitoring program that will be a major imposition will be the Development and Redevelopment monitoring and database, the outfall monitoring for Storm water runoff and for non-storm water performed at the outfalls from the City. Fortunately, with the economy as slow as it is currently priority projects that must implement the Development and re-development provisions will not be many. But the obligation to track these projects through construction and into the future will impose a new program that will need to be funded forever. At least with development and redevelopment we have projects that can be expected to fund these inspections with fee paid either by the HOA or business.



The two outfall monitoring programs will be the most costly and time consuming and least able to pay for the cost to implement. Just the sheer number of tests that must be performed at each monitoring site is frightening. The storm water outfall monitoring is difficult to estimate how many sites we are being asked to monitor, but if we assume that a City will be monitoring outfalls at the down slope boundary of its jurisdiction, two or three locations, and if there are outfalls from a neighboring City on the upstream side of town the number of monitoring location could total six sites. Of the two options, automatic or manual sampling, most cities will select the automatic equipment over having two or three employees at an outfall location for 24 hours to sample for the storm flow. Once the samples are collected they must be sent to a Laboratory for testing. This permit requires that Acute Toxicity testing be performed on two samples per year from each monitoring station. Once the site are selected the permit requires three sampled storm events during the rainy season including the first significant rain event to capture the first flush runoff. The monitoring stations will generally cost the Permittee between \$75,000 and \$100,000 each with tests running between two and three thousand dollars per event.

The non-storm water monitoring program may be a far more expensive program. Most Cities will likely have 10 to 30 outfalls that they will have to monitor during the five year term of the permit. Because this is a rotating program the Cities will either purchase or rent portable monitoring and sampling equipment. If they purchase equipment they will be facing costs of nearly \$50,000 and the cost of maintenance of the equipment. Again the sampling will require each outfall to be monitored for 24 hours. The samples must be composite samples generally with a volume of nearly five gallons so that the pollutants of concern and the Acute Toxicity testing can be performed. Permittees are likely looking at a monitoring program that will cost them \$300,000 to \$600,000 per year that cannot be shared with other permittees. There is no way to argue that monitoring of this cost is not significant. Permittees under the current permit are paying \$5,000 to \$10,000 per year for monitoring.

The Regional Board must address the issue of cost to justify the need for a Permit that is so expensive.

AS I STATE AT THE BEGINNING OF THIS LETTTER THIS PERMIT IS WRITTEN TO CAUSE CITIES TO FAIL TO MEET THE PERMIT PROVISIONS. A LESS COSTLY PERMIT AND A PERMIT THAT DOES NOT IMPOSE SO MANY NEW PROGRAMS AT ONE TIME MUST BE DEVELOPED.

There are several routine matters that the Regional Board must address. In the list of permittees there are several erroneous entries in the table. 1) City of Bradbury contact should be Michele Keith the City Manager, I believe that Bradbury as three employees. 2) City of Lawndale Contact is not Marlene Miyoshi, Marlene no longer works for the City of Lawndale, 3) City of Rolling Hills Contact is not Greg Grammer, Mr. Grammer is correctly shown as the Contact for Rolling Hills Estates for whom he works.

Section VI.D.6.b.ii, tries to define when a project that is currently under design will be exempt from compliance with this permit. It read as follows:



(d) “Existing Development or Redevelopment projects shall mean projects that have been constructed or for which grading or land disturbance permits have been submitted and are deemed complete prior to the adoption date of this order, except as otherwise specified in this Order.”

The phrase – “for which grading or land disturbance permits have been submitted and are deemed complete” – needs to be clarified. As written the phrase is vague and open to many interpretations. One interpretation might be the submittal of grading or building plans for plan check is deemed complete for actually performing the plan check. A second interpretation might be that the Grading or Building plan check has been completed and the project is waiting for the permits to be issued. A third interpretation might be that the Grading or Building Plans have been submitted to the Planning Department and are deemed complete for processing the plans for discretionary approvals. A fourth possible interpretation is that the application to demolish an existing building has been submitted and is ready for issuance.

This is obviously too broad a range of interpretations to be meaningful. I would request that the Regional Board Staff Clarify what stage of processing the Board is intending for these cases.

Section VI.D.6.d.ii of the proposed permit asks Permittees to enter into agreements among municipal departments that have jurisdiction of project review. This request seems unusual because most Permittees do not have MOUs or formal written agreements between departments within the City Department structure. Normally, the City departments are responding to a State or Local Law or Regulation which establishes the obligation to perform a review or impose certain conditions. The MS4 permit is one of those regulations that the Permittees must address in their normal activities. Asking a City to create a formal agreement between Departments is going to be difficult to justify. I think that the Regional Water Board needs to rethink this awkward requirement or create a model form for the Cities to use.

Section VI.D.7.h.ii.6, appears to be inconsistent with the CGP allowances for the Design of Structural BMPs. This section limits the design of Structural BMPs to Civil Engineers only. The State CGP allows eight different professional to qualify as QSD with the authority to design Structural BMPs. If the Regional Board Staff feels that the State Board was too lenient by allowing all of these groups to have the authority the reasoning should be clearly stated in the permit so that these other qualified professionals understand why their qualifications are being challenged.

VI.A.2.a.viii, requires the Cities to enter agreements with agencies such as the California Department of Transportation or other similar state agencies liked the Department of Water Resources that discharge water to our MS4. These superior agencies have no reason to bind themselves to a Municipal Government. If the Regional Water Board believes that these agencies should enter these agreements please provide the authority in the permit for the Cities to cite for requiring these superior agencies to respond to the Cities.

The Los Angeles Permit Group is submitting comments related to this subject. This letter supports those comments though they are not duplicated in this letter.

Again, I would like to thank you for allowing the Permittees to review and comment on the proposed draft permit language. This is a very difficult assignment and the Regional Board should be commended



December 5, 2011

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for its effort to maintain an open dialogue with the Cities. If you have any questions on these comments please contact me at 562-908-6278.

Sincerely

A handwritten signature in black ink, appearing to read "Elroy L. Kiepke". The signature is written in a cursive style with a large initial "E".

Elroy L. Kiepke
NPDES consultant

