

RESPONSE TO COMMENTS RECEIVED IN ADVANCE OF THE JULY 13, 2006 BOARD MEETING
ON THE PROPOSED REOPENER OF
THE COUNTY OF LOS ANGELES MUNICIPAL STORM WATER DISCHARGE PERMIT
(NPDES PERMIT NO. CAS004001)
AUGUST 4, 2006

Table 1. List of commenters submitting written comments in advance of the July 13, 2006 Board Meeting.

Comment #	Commenter
1	City of Arcadia (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
2	City of Bell (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
3	City of Bellflower (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
4	City of Carson (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
5	City of Claremont (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
6	City of Commerce (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
7	City of Glendora (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
8	City of Hawaiian Gardens (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
9	City of Inglewood
10	City of Lawndale (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
11	County of Los Angeles
12	City of Los Angeles
13	City of Monterey Park (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
14	City of Redondo Beach
15	City of Rolling Hills Estates
16	City of Rolling Hills
17	City of South Gate (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
18	City of South Pasadena (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
19	City of Temple City (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
20	City of Whittier (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
21	Executive Advisory Committee
22	CPR
23	Latham and Watkins for Pepperdine
24	Latham and Watkins for Playa Capital Co.
25	NRDC
26	City of Oxnard (<i>Outside jurisdiction of Santa Monica Bay; therefore not subject to requirements of amendment</i>)
27	Playa Capital Co.
28	Richards Watson and Gershon
29	Rutan and Tucker
30	City of Gardena

Note: The comment # above corresponds to the first number in the Comment Number field in Table 2.

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Table 2. Responsiveness summary for written comments submitted before the close of the public comment period.

COMMENT NUMBER	SUMMARY OF COMMENT	RESPONSE	REVISION	LOCATION IN DOCUMENTS
1.1	<p>The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant, which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants, including those subject to total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis. Although the limitation is couched as a discharge prohibition (i.e. - an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (i.e. - a numeric target for bacteria).</p>	<p>The USEPA memorandum referenced is not a policy, but a "not binding" "guidance" memorandum containing "recommendations". It notes that "there may be other approaches that would be appropriate in particular situations," and that USEPA would make each permitting decision on a case-by-case basis considering the particular circumstances of each. (See Memorandum: Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, dated 11/22/02, from Director Robert H. Wayland, III, to Director James Hanlon, pp. 5-6.)</p> <p>Furthermore, the proposed permit amendment is not contrary to the recommendations in the memorandum. The memorandum's recommendations relate specifically to municipal "storm water" discharges. Specifically, the memorandum states that EPA recognizes that "storm water discharges are due to <u>storm events</u> that are highly variable in frequency and duration and are not easily characterized," and therefore numeric effluent limits may be infeasible or inappropriate. The provisions of this amendment, however, do not relate to storm events, and in fact, storm events are specifically excluded from these provisions and the TMDL that they implement. This reopener only relates to dry weather discharges, which are by definition not storm days, but rather days with less than 0.1 inch of rain. Such non storm water discharges are primarily nuisance flows, such as watering lawns, washing cars, and other incidental and nominal discharges of urban living that flow into the storm drains.</p> <p>The provisions are included as receiving water limitations because the TMDL's waste load allocations are expressed</p>		

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		<p>as "exceedance days" in the water body, i.e., receiving water limitations.</p> <p>The permit is abundantly clear that unauthorized non storm water discharges containing pollutants are prohibited. Similar prohibitions were contained in the 1990 and 1996 LA MS4 permits.</p> <p>Finally, it is anticipated that most compliance will occur through diversion of dry weather flows to sanitary sewers. In that respect, there is nothing to iterate. Either the responsible jurisdictions have diverted or they have not.</p>		
1.2	The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.	<p>Since a regional board's orders or basin plan provisions would always be superseded by a conflicting state policy for water quality control, it is thus impossible for an action of a regional board to "preempt" such a state policy. The commenter is essentially arguing that the Regional Board should await a potential policy that the State Board might issue in the future. The comment is not appropriate. Regional boards cannot forgo regulating the dischargers in their region merely because the State Board might adopt a relevant policy with as yet undetermined provisions sometime in the future. There is no indication that any storm water policy that the State might issue would conflict with these permit provisions in any event. If that occurred, this permit could readily be reopened to make its provisions consistent with any such state policy. Furthermore, the commenter's reference is to the establishment of a policy of numeric limits for <u>storm water</u> discharges in MS4 permits. This action deals with non-storm water discharges.</p>		
1.3	The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4	The permit language for Part 1. B. and Part 2.5 has been revised to clarify that the requirements apply to jurisdictions in the Santa Monica Bay Watershed Management Area and that the Receiving Water Limitations established to implement the Santa Monica	Yes	Permit language, Part 1. B. and Part 2.5

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	Permittees.	Bay Beaches Bacteria TMDL summer dry weather waste load allocations apply at the compliance monitoring sites identified in the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> dated April 7, 2004.		
1.4	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedences of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met - period.	<p>The Santa Monica Bay Beaches Dry Weather Bacteria TMDL has been in effect for three years, since July 2003. Responsible jurisdictions have been aware of the implementation deadlines in the TMDL for 4½ years, since Regional Board adoption of the TMDL in January 2002. Responsible jurisdictions were also aware that the primary implementation mechanism for the requirements of the TMDL would be the Los Angeles County MS4 Permit. Therefore, jurisdictions have had 4½ years to apply an iterative process for resolving exceedences of water quality standards.</p> <p>Furthermore, early in the process key jurisdictions indicated that their approach to compliance with dry weather TMDL requirements would be to divert storm drain discharges to sanitary sewers. Diversions are a proven method for reducing bacteria at the beach; therefore, the additional time that might be required to use an iterative process is not necessary under these circumstances. See response to comment 1.1.</p> <p>Additionally, new permit findings are proposed that describe conditions under which permittees generally would be granted safe harbor, <u>even if exceedance days occur, where the Regional Board determines that:</u></p> <p><u>(a) The source of the exceedance did not emanate from the MS4;</u> <u>(b) The MS4 discharge has been diverted to a sanitary sewer;</u> <u>(c) The MS4 discharge has been treated to a level that</u></p>	Yes	Permit Finding E.31

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		<p><u>does not violate the single sample or geometric mean bacteria objectives; or</u> (d) <u>The permittees have demonstrated through a source investigation of the subwatershed pursuant to protocols established under Cal. Water Code 13178 that bacterial sources originating within the jurisdiction of the permittee have not caused or contributed to the exceedance of the Receiving Water Limitations.</u></p> <p><u>These safe harbor provisions would be consistent with the compliance monitoring provisions associated with the Santa Monica Bay Beaches Bacteria TMDLs, which are contained in Table 7-4.4 of the Basin Plan.</u></p> <p>The iterative process is to be used mainly to control pollutants in storm water discharges. The action deals with non-storm water discharges. For non-storm water discharges the Permittees had 15+ years to eliminate them or have them permitted under a traditional NPDES permit.</p> <p>Whatever the intent of paragraphs 2.1 through 2.4 may have been, the intent of paragraph 2.5 is to implement the summer dry weather TMDL which prohibits discharges that violate standards during relevant times of the year.</p>		
1.5	The City of Arcadia believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	The reopener will implement a federally mandated and approved TMDL into a federal NPDES permit, consistent with all federal requirements. Neither the <i>LA/Burbank</i> decision, nor any other authority requires an economic analysis under such circumstances. As noted in the <i>LA/Burbank</i> decision, NPDES permits must implement water quality standards irrespective of cost considerations. This action does not exceed the federal standard which is abundantly clear that the discharge of unauthorized non-storm water flows containing pollutants causing or contributing to violation of WQS or WQOs is prohibited.		
1.6	The City also believes that the introduction of Santa Monica	The California Environmental Quality Act expressly		

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	Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	exempts from its provisions the issuance of NPDES permits.		
1.7	It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement, along with the wet weather WLA, under Part 3., <i>Storm Water Quality Management Program (SQMP) Implementation</i> . Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i> , and under that, <i>Santa Monica Beaches Bacteria TMDL</i> .	See response to comment 1.1. Part 2 contains the Receiving Water Limitations, which is how the waste load allocations in the TMDL were expressed, so it is appropriate that they be placed there. The SQMP is geared toward managing the quality of <u>storm water</u> discharges and eliminating unauthorized non-storm water flows or to get them permitted under the NPDES program. See also response to comment 1.4		
2.1	The proposed re-opener effectively proposes the incorporation of a numerical limit on the discharge of a pollutant within a Municipal NPDES Storm Water permit. This is contrary to stated legislative intent and U.S. Environmental Protection Agency (US EPA) policy. The US EPA has clearly stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) through the use of Best Management Practices (BMPs) implemented on an iterative basis ("trial and error"). Although the limitation is termed a "discharge prohibition" and a "receiving water limitation," it is nonetheless a numerical limitation.	See response to comment 1.1		
2.2	The Regional Board's inclusion of a numerical limit into the Permit preempts the State Water Resources Control Board's current efforts in establishing a statewide policy on inclusion of numerical limits in MS4 NPDES Permits.	See response to comment 1.2		
2.3	The draft language in Part 1.B, which addresses non-storm water discharge prohibitions, is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria in Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:	See response to comment 1.3		

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	<p>“Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited.”</p> <p>In other words, <u>any</u> dry weather discharge that exceeds the WLA for the Santa Monica Beaches Bacteria TMDL, but that occurs anywhere in the watershed, would constitute an illicit discharge. The order and use of these terms therefore causes one to conclude that this requirement applies to <u>all</u> non-storm water discharges regardless of whether a municipality is subject to the Santa Monica Beaches Bacterial TMDL. Hence, the proposed MS4 permit language therefore does not expressly say that the discharge prohibition applies <u>only to Santa Monica Bay Beaches</u>.</p> <p>Such misleading language and terminology could potentially cause other permittees that fail to meet this waste load allocation, in other parts of the region, to be found to be in non-compliance with revised permit language. The Regional Board or third party could then, for example, sample discharges outside the Santa Monica Bay and should those discharges exceed the WLA the permittee in question could be found to be in violation of the prohibition on illicit discharges. Such proposed permit language should therefore be reconsidered and revised prior to adoption of this proposed permit language.</p>			
2.4	The addition of paragraph 5 to Part 2 of the existing Permit, entitled "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the permittee or permittees to increase existing BMPs or add	See response to comment 1.4		

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	new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve such exceedances. Paragraph 5 simply says that the waste load allocation must be met - period.			
2.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible to ascertain. Currently, the means for determining whether a discharge <i>is</i> an illicit one is often based on visual appearance and odors. There is no field testing device available to determine if a discharge is contaminated with bacteria, making it virtually impossible to determine if an illicit discharge has occurred.	It is not a requirement that a discharge must be tested in the field to determine the concentration of bacteria. Standard laboratory methods are available to analyze bacteria in water samples. The methods by which water samples should be analyzed for bacteria are outlined in the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> dated April 7, 2004. Additionally, rapid methods are under development and may be available for use in the near future.		
2.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL numerical limits in the Los Angeles County MS4. Permit exceeds the federal standard and, therefore, is subject to economic analysis under Section 13241 of the California Water Code.	See response to comment 1.5		
2.7	The City believes that the introduction of the Santa Monica Beaches bacteria numerical limitations into the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
2.8	In addition to the above noted language and terminology concerns, we believe that the more appropriate location for such permit terms is in Part 3 of the current Permit entitled " <i>Storm Water Quality Management Program (SWMP) Implementation.</i> " Specifically, we suggest that the Board's move such language to paragraph H.I of the current Permit, now titled as " <i>Watershed Specific Programs,</i> " and create a sub-paragraph entitled, " <i>Santa Monica Beaches Bacteria Numerical Limits.</i> " Placing such proposed dry weather SMB Bacteria TMDL language into the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is	See response to comment 1.7		

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	likely to lead to administrative and possibly legal challenges.			
3.1	The proposed reopener effectively, proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to U.S. Environmental Protection Agency (EPA) policy as it relates to municipal NPDES permits. The EPA has stated that municipal NPDES permits <i>are</i> to address pollutants including those subject total maximum daily loads (TMDLs), through the use of best management practices (BMPs) to be implemented on an iterative basis. Although the limitation is couched as a discharge prohibition and also, inexplicably. As a receiving water limitation, it still qualifies as a numeric limit because it includes waste load allocations (WLAs) for bacteria.	See response to comment 1.1		
3.2	The City has previously submitted comments regarding the requirement for municipalities to strictly comply with numeric water quality objectives, i.e., a TMDL's WLAs. These comments were submitted to, the County of Los Angeles, and copied to the Regional Board, by Rutan & Tucker, LLP, on behalf of the City (please refer to Section C.1 ROWD Section 4.16 Total Maximum Daily Load (TMDL) Implementation Plans of the June 8, 2006 letter from Mr. Richard Montevideo entitled, ROWD Submittal on Renewal of 2001 Municipal NPDES Permit for Los Angeles County).	Both the <i>Defenders of Wildlife</i> decision and the <i>Rancho Cucamonga</i> decision affirm the Regional Board's authority to require strict compliance with water quality standards, including for discharges of storm water from MS4s. The unauthorized non-storm water discharges are subject to the prohibitions contained in Part 1 and 2.1.		
3.3	The Regional Board's inclusion of a numeric limit in the NPDES Permit preempts the State Water Resources Control Board's <i>effort</i> to establish a policy on numeric limits in municipal NPDES permits.	See response to comment 1.2		
3.4	The proposed new language for Part1.B. which address non-stormwater discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather WLA for bacteria for Santa Monica Bay Beaches to all Los Angeles County MS4 Permittees (Municipal Permittees), as the following illustrates: Discharge' of summer dry weather and, winter dry weather	See response to comment 1.3		

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	<p>flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is, prohibited.”¹,</p> <p>The aforementioned language does not state that the discharge prohibition applies only' to Santa Monica Bay Beaches; therefore; the discharge prohibition would apply to all non-storm water discharges, regardless of whether a Municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL It should also be noted that all Municipal Permittees that fail to meet this WLA could be placed into a state of non-compliance. The Regional Board or a third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days); the Municipal Permittees in question could be in violation of the discharge prohibition.</p>			
3.5	<p>The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving, continued exceedances' of water quality standards. There is no opportunity for a Municipal Permittee to either increase existing BMPs or add new ones the Stormwater Quality Management Plan to attempt to resolve exceedances. Paragraph 5 simply states that the WLAs must be met.</p>	See response to comment 1.4		
3.6	<p>Determining whether a non-stormwater discharge is an illicit discharge based on its bacteria content will be difficult if not impossible. Currently, the means for determining whether a discharge is an illicit based on visual appearance and odor.</p>	See response to comment 2.5		
3.7	<p>The City believes that the' introduction of the Santa Monica Bay Beaches Bacteria TMDL into the NPDES Permit exceeds the federal standard; therefore, it is subject to</p>	See response to comment 1.5		

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	economic analysis.			
3.8	The City believes that the introduction of the Santa Monica Bay Beaches Bacteria TMDL into the NPDES Permit is contrary to the 'California Environmental Quality Act because no "Environmental ' Impact Report" equivalent was performed.	See response to comment 1.6		
3.9	If the proposed dry weather Santa Monica Bay Beaches Bacteria TMDL is placed under the Discharge Prohibitions and Receiving Water Limitations sections of the NPDES Permit, thereby establishing a numeric limit, this may lead to administrative and/or legal challenges.	See response to comment 1.7		
4.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).	See response to comment 1.1		
4.2	The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.	See response to comment 1.2		
4.3	The proposed new language for Part 1.B, which addresses non-storm water - discharge prohibitions of	See response to comment 1.3		

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	<p>the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load: allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p> <p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA. (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p>			
4.4	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and, intent of this section, which is to provide an iterative process for resolving	See response to comment 1.4		

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	continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase -existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met - period.			
4.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
4.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
4.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
4.8	It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement - along with the wet weather WLA - under Part 3, <i>Storm Water Quality Management Program (SQMP) Implementation</i> . Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i> , and under that, <i>Santa Monica Beaches Bacteria TMDL</i> .	See response to comment 1.7		

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5.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants - including those subject Total Maximum Daily Loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).	See response to comment 1.1		
5.2	The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.	See response to comment 1.2		
5.3	The proposed new language for Part 1.B. which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates: "Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited." ¹	See response to comment 1.3. The commenter's statement about the effect of a prohibition is correct, however, the commenter should review the safe harbor provisions described in response to comment 1.4.		

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	<p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p> <p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p>			
5.4	<p>The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met – period.</p>	See response to comment 1.4		
5.5	<p>Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for</p>	See response to comment 2.5		

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	determining whether a discharge is an illicit one is based on visual appearance and odor.			
5.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
5.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
5.8	It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement - along with the wet weather WLA - under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i> . Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i> , and under that, <i>Santa Monica Beaches Bacteria TMDL</i> .	See response to comment 1.7		
5.9	To allow the proposed dry weather SMB Bacteria TMDL to be placed under the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to invite administrative and, possibly, legal challenge. The City looks forward to the Regional Board's reconsideration of addressing bacterial exceedances for Santa Monica Bay within the context of a proper and reasonable process and mechanism.	Regional Board staff is confident that the proposed modifications to the permit are consistent with the Regional Board's legal authority. While Regional Board staff does not believe that litigation to forestall attainment of water quality standards is a productive use of taxpayer money, the City is within its legal rights to seek administrative or judicial review of the Regional Board's order.		
6.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a	See response to comment 1.1		

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	<p>pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still Qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).</p>			
6.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.</p>	See response to comment 1.2		
6.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal</p>	See response to comment 1.3		

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	<p>Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p> <p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p>			
6.4	<p>The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met - period.</p>	See response to comment 1.4		
6.5	<p>Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.</p>	See response to comment 2.5		
6.6	<p>The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4</p>	See response to comment 1.5		

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	Permit exceeds the federal standard and, therefore, is subject to economic analysis.			
6.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
6.8	<p>It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should instead, place this requirement-along with the wet weather WLA –under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i>. Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i>, and under that, <i>Santa Monica Beaches Bacteria TMDL</i>.</p> <p>To allow the proposed dry weather SMB Bacteria TMDL to be placed under the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to invite administrative and, possibly, legal challenge.</p>	See response to comment 1.7		
7.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants – including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit	See response to comment 1.1		

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	because it includes a "waste load allocation" (a viz., a numeric target for bacteria).			
7.2	The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.	See response to comment 1.2		
7.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p> <p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance</p>	See response to comment 1.3		

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	days), the municipality in question could be in violation of the prohibition on illicit discharges.			
7.4	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met - period.	See response to comment 1.4		
7.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
7.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
7.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
7.8	It is understood that the Regional Board wishes to	See response to comment 1.7		

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	incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement – along with the wet weather WLA under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i> . Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i> , and under that, <i>Santa Monica Beaches Bacteria TMDL</i> .			
7.9	To allow the proposed dry weather SMB Bacteria TMDL to be placed under the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to invite administrative and, possibly, legal challenge.	See response to comment 5.9		
8.1	The proposed re-opener effectively proposes the incorporation of a numerical limit on the discharge of a pollutant within a Municipal NPDES Storm Water permit. This is contrary to stated legislative intent and U.S. Environmental Protection Agency (US EP A) policy. The US EP A has clearly stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) - through the use of Best Management Practices (BMPs) implemented on an iterative basis ("trial and error"). Although the limitation is termed a "discharge prohibition" and a "receiving water limitation," it is nonetheless a numerical limitation.	See response to comment 1.1		
8.2	The Regional Board's inclusion of a numerical limit into the Permit preempts the State Water Resources Control	See response to comment 1.2		

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	<p>Board's current efforts in establishing a statewide policy on inclusion of numerical limits in MS4 NPDES Permits.</p>			
8.3	<p>The draft language in Part 1.B, which addresses non-storm water discharge prohibitions, is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria in Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."</p> <p>In other words, <u>any</u> dry weather discharge that exceeds the WLA for the Santa Monica Beaches Bacteria TMDL, but that occurs anywhere in the watershed, would constitute an illicit discharge. The order and use of these terms therefore causes one to conclude that this requirement applies to <u>all</u> non-storm water discharges regardless of whether a municipality is subject to the Santa Monica Beaches Bacterial TMDL. Hence, the proposed MS4 permit language therefore does not expressly say that the discharge prohibition applies <u>only to Santa Monica Bay Beaches</u>.</p> <p>Such misleading language and terminology could potentially cause other permittees that fail to meet this waste load allocation, in other parts of the region, to be found to be in non-compliance with revised permit language. The Regional Board or third party could then, for example, sample</p>	See response to comment 1.3		

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	discharges outside the Santa Monica Bay and should those discharges exceed the WLA the permittee in question could found to be in violation of the prohibition on illicit discharges. Such proposed permit language should therefore be reconsidered and revised prior to adoption of this proposed permit language.			
8.4	The addition of paragraph 5 to Part 2 of the existing Permit, entitled "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the permittee or permittees to increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve such exceedances. Paragraph 5 simply says that the waste load allocation must be met - period	See response to comment 1.4		
8.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible to ascertain. Currently, the means for determining whether a discharge is an illicit one is often based on visual appearance and odors. There is no field testing device available to determine if a discharge is contaminated with bacteria, making it virtually impossible to determine if an illicit discharge has occurred.	See response to comment 2.5		
8.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL numerical limits in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis under Section 13241 of the California Water	See response to comment 1.5		

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	Code.			
8.7	The City believes that the introduction of the Santa Monica Beaches bacteria numerical limitations into the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed	See response to comment 1.6		
8.8	In addition to the above noted language and terminology concerns, we believe that the more appropriate location for such permit terms is in Part 3 of the current Permit entitled " <i>Storm Water Quality Management Program (SWMP) Implementation.</i> " Specifically, we suggest that the Board's move such language to paragraph H.1 of the current Permit, now titled as " <i>Watershed Specific Programs,</i> " and create a sub-paragraph entitled, " <i>Santa Monica Beaches Bacteria Numerical Limits.</i> " Placing such proposed dry weather 5MB Bacteria TMDL language into the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to lead to administrative and possibly legal challenges.	See response to comment 1.7		
9.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to a United States Environmental Protection Agency (USEP A) policy as it relates to municipal NPDES permits. The USEP A has stated that municipal National Pollutant Discharge Elimination System (NPDES) permits are to address pollutants - including those subject Total Maximum Daily Loads (TMDLs) through the use of Best Management Practices (BMPs) to be implemented on	See response to comment 1.1		

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	<p>an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a Waste Load Allocation (WLA), or numeric target for bacteria.</p>			
9.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles County MS4 NPDES Permit (MS4 Permit) preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4Permits.</p>	See response to comment 1.2		
9.3	<p>The proposed new language for Part I.B, which addresses non-storm water discharge prohibitions of the current MS4 Permit is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches. It should also be noted that all Permittees that fail to meet</p>	See response to comment 1.3		

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	this WLA would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.			
9.4	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan to attempt to resolve exceedance. Paragraph 5 simply says that a WLA must be met - period.	See response to comment 1.4		
9.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
9.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
9.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		

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10.1	<p>The proposed re-opener effectively proposes the incorporation of a numerical limit on the discharge of a pollutant within a Municipal NPDES Storm Water permit. This is contrary to stated legislative intent and U.S. Environmental Protection Agency (US EP A) policy. The US EP A has clearly stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) - through the use of Best Management Practices (BMPs) implemented on an iterative basis ("trial and error"). Although the limitation is termed a "discharge prohibition" and a "receiving water limitation," it is nonetheless a numerical limitation.</p>	See response to comment 1.1		
10.2	<p>The Regional Board's inclusion of a numerical limit into the Permit preempts the State Water Resources Control Board's current efforts in establishing a statewide policy on inclusion of numerical limits in MS4 NPDES Permits.</p>	See response to comment 1.2		
10.3	<p>The draft language in Part 1.B, which addresses non-storm water discharge prohibitions, is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria in Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."</p> <p>In other words, <u>any</u> dry weather discharge that exceeds the</p>	See response to comment 1.3		

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	<p>WLA for the Santa Monica Beaches Bacteria TMDL, but that occurs anywhere in the watershed, would constitute an illicit discharge. The order and use of these terms therefore causes one to conclude that this requirement applies to <u>all</u> non-storm water discharges regardless of whether a municipality is subject to the Santa Monica Beaches Bacterial TMDL. Hence, the proposed MS4 permit language therefore does not expressly say that the discharge prohibition applies <u>only to Santa Monica Bay Beaches</u>.</p> <p>Such misleading language and terminology could potentially cause other permittees that fail to meet this waste load allocation, in other parts of the region, to be found to be in non-compliance with revised permit language. The Regional Board or third party could then, for example, sample discharges outside the Santa Monica Bay and should those discharges exceed the WLA the permittee in question could found to be in violation of the prohibition on illicit discharges. Such proposed permit language should therefore be reconsidered and revised prior to adoption of this proposed permit language.</p>			
10.4	<p>The addition of paragraph 5 to Part 2 of the existing Permit, entitled "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the permittee or permittees to increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to</p>	See response to comment 1.4		

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	resolve such exceedances. Paragraph 5 simply says that the waste load allocation must be met - period.			
10.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be difficult if not impossible to ascertain. Currently, the means for determining whether a discharge is an illicit one is often based on visual appearance and odors. There is no field testing device available to determine if a discharge is contaminated with bacteria, making it virtually impossible to determine if an illicit discharge has occurred.	See response to comment 2.5		
10.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL numerical limits in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis under Section 13241 of the California Water Code.	See response to comment 1.5		
10.7	The City believes that the introduction of the Santa Monica Beaches bacteria numerical limitations into the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
10.8	In addition to the above noted language and terminology concerns, we believe that the more appropriate location for such permit terms is in Part 3 of the current Permit entitled " <i>Storm Water Quality Management Program (SWMP) Implementation.</i> " Specifically, we suggest that the Board's move such language to paragraph H.1 of the current Permit, now titled as " <i>Watershed Specific Programs,</i> " and create a subparagraph entitled, " <i>Santa Monica Beaches Bacteria</i>	See response to comment 1.7		

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	<i>Numerical Limits.</i> Placing such proposed dry weather 5MB Bacteria TMDL language into the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to lead to administrative and possibly legal challenges.			
11.1	The County is committed to meeting water quality standards for bacteria at Santa Monica Bay beaches and throughout the County. Since adoption of the dry weather bacteria Total Maximum Daily Load (TMDL) in January 2004, the County has voluntarily taken the following actions.	The Regional Board acknowledges the actions taken to date by the County of Los Angeles to improve water quality and achieve water quality standards at SMB beaches.		
11.2	INCLUSION OF NUMERIC LIMITS IN THE PERMIT DIRECTLY CONTRADICTS EPA GUIDANCE THAT STATES THAT TMDL LIMITS SHOULD BE INCLUDED IN STORM WATER PERMITS IN THE FORM OF BMPS AND MONITORING TO DETERMINE IF COMPLIANCE IS BEING ACHIEVED	See response to comment 1.1.		
11.3	REOPENING THE STORM WATER PERMIT AT THIS TIME IS UNNECESSARY AND PREMATURE	<p>Reopening the permit at this time is wholly appropriate given that compliance with the summer dry weather provisions of the TMDL is required by July 15, 2006. All co-permittees under the LA County MS4 Permit have been on notice since 2001 that the staff report/ fact sheet of the current Los Angeles County MS4 permit anticipated the incorporation of TMDLs:</p> <p>“TMDLs are one of the Regional Board's highest priorities. In view of the Region's highly urbanized environment, it is likely that pollutants in storm water will be allocated significant load reductions. While specific load reductions can't be forecast at this time, the Board does envision that storm water permits will be an important mechanism for implementing pollutant load reductions [in storm water discharges].” (p. 14.)</p>		

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		<p>Additionally, the regulatory provisions of the TMDL state that the primary mechanism for implementing the TMDL's [dry and wet weather components] will be through the MS4 Permits (Basin Plan Table 7-4.1).</p> <p>This action deals with non-storm water discharges that cause or contribute to a violation of WQS or WQOs.</p> <p>Furthermore, incorporation of the TMDL provisions into the MS4 Permit is important at this time given the millions of visitors to Santa Monica Bay beaches at this -- the height of the beach season. The Regional Board obligated to protect the health of the millions of citizens that visit Santa Monica Bay beaches each summer. A recent study estimated that an annual excess of 627,800 to 1,479,200 cases of gastrointestinal illness occur as a result of swimming at Los Angeles and Orange County beaches contaminated with <i>enterococci</i> bacteria. Using a conservative health cost of gastroenteritis, this corresponds to an annual economic loss of \$21 million or \$50 million (in year 2000 dollars) depending upon the underlying epidemiological model used. (Given, S. and Pendleton, L. from the UCLA Department of Environmental Health Sciences, and Boehm, A. from the Stanford University Department of Civil and Environmental Engineering, Environmental Science and Technology - <i>in press.</i>)</p>		
11.4	Proposes to include numeric effluent limits in the Permit prior to issuance of the report of the Storm Water Panel of Experts, commissioned by the State Water Resources Control Board, on whether inclusion of such numeric limits in stormwater permits is feasible or appropriate.	See response to comment 1.2. Nothing in the record supports the claim that complying with the permit provisions that implement the dry weather TMDL would be infeasible or inappropriate. In fact many cities have already complied, and are in the process of complying with the provisions.		

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	<p>It is inappropriate for the Regional Board to adopt numeric limits without first obtaining the guidance that will be obtained from this expert panel. There is no regulatory imperative to reopen the Permit before this expert panel issues its recommendation and no reason to do so.</p>	<p>See response to comment 11.3</p>		
11.5	<p>The Regional Board should not incorporate numeric bacteria limits into the Permit when the full spectrum of bacteria sources is not known and while the issue of whether fecal bacteria from nonpoint sources accurately indicates the presence of human pathogens is being examined.</p>	<p>It is well documented that discharges from storm drains during dry and wet weather carry significant loads of bacteria to the shoreline in southern California. Noble et al. found that freshwater outlets, which included storm drains, failed to meet bacterial indicator standards in almost 60% of the samples, the worst of all of the strata evaluated in the regional shoreline monitoring program. Most of the standard failures near freshwater outlets were for multiple indicators and occurred repetitively throughout the five-week study period. (Noble, Rachel T., Dorsey, J., Leecaster, M., Mazur, M., McGee, C., Moore, D., Victoria, O., Reid, D., Schiff, K., Vainik P., Weisberg, S. 1999. Southern California Bight 1998 Regional Monitoring Program, Vol I: Summer shoreline microbiology. Southern California Coastal Water Research Project, Westminster, CA.)</p> <p>It has also been documented that storm drains discharging to the shoreline of Santa Monica Bay contain human pathogens. Noble et al., cited above, showed through molecular tests the presence of human enteric virus genetic material in 7 of the 15 freshwater outlets, with 73% of these detections coinciding with levels of fecal coliforms that exceeded bacterial indicator thresholds.</p> <p>Furthermore, it was well documented in a landmark epidemiological study at Santa Monica Bay beaches -- the beaches covered by this amendment -- that there are</p>		

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		<p>significantly increased health risks from swimming and otherwise engaging in water recreation in the ocean in the vicinity of flowing storm drains (Haile, R.W., Alamillo, J., Barret, K., Cressey, R., Dermond, J., Ervin, C., Glasser, A., Harawa, N., Harmon, P., Harper, J., McGee, C., Millikan, R.C., Nides, M., Witte, J.S. 1996. An epidemiological study of possible adverse health effects of swimming in Santa Monica Bay, Santa Monica Bay Restoration Project; Haile, R.W., Witte, J.S., Gold, M., Cressey, R., McGee, C., Millikan, R.C., Glasser, A., Harawa, N., Ervin, C., Harmon, P., Harper, J., Dermond, J., Alamillo, J., Barret, K., Nides, M., Wang, G. 1999. The health effects of swimming in ocean water contaminated by storm drain runoff. Epidemiology 10(4):355-363.). While there may be unknowns regarding the myriad sources of bacteria within a watershed, in light of these scientific findings, it is imperative that the Regional Board not wait to regulate these discharges given that the health of millions of beachgoers is at stake.</p> <p>These facts were already established by regulation when the TMDL was adopted.</p>		
11.6	<p>Reopening the Permit for one TMDL now, rather than addressing it during the Permit renewal process, is premature, will result in a piecemeal rather than coordinated approach to the TMDLs, and as noted above will deny the Regional Board the benefit of the report to be issued by the State Board's panel of experts.</p>	<p>See responses to comments 1.2 and 11.3.</p>		
11.7	<p>The Regional Board and the permittees should develop a coordinated approach for incorporating into the Permit provisions to implement all the TMDLs that have been adopted to date. It should not been done on a piecemeal</p>	<p>See response to comment 11.3. While in some cases multiple TMDLs may be simultaneously incorporated into the permit, the implementation schedule articulated in the basin plan will also drive incorporation. In this instance, compliance with the dry weather limits is required by July</p>		

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	basis. A proper venue for that discussion between Regional Board staff and the permittees is the Permit renewal process. Because the Permit renewal process has already commenced, there is no need to circumvent that process for one TMDL.	15, 2006.		
11.8	The Permit should not be reopened to address the Santa Monica Bay Beaches Bacteria TMDL because that TMDL has not yet been coordinated with the Malibu Creek Bacteria TMDL and the Ballona Creek Bacteria TMDL.	Implementation schedules for winter dry weather and wet weather are consistent among the three TMDLs. For summer dry weather, the Malibu Creek Bacteria TMDL requires compliance within 3 years, but allows an extension up to 6 years with Regional Board approval. The Ballona Creek Bacteria TMDL allows up to 6 years to comply with dry weather provisions during both summer and winter. The Santa Monica Bay Beaches TMDL requires compliance during summer dry weather within 3 years at compliance monitoring sites located at the outlets of Ballona Creek and Malibu Creek. Given the complexity and size of these subwatersheds, the Regional Board will consider the circumstances and the extent to which the copermitees have endeavored to comply with the permit provisions when evaluating potential enforcement actions.		
11.9	Compliance at the monitoring stations influenced by Malibu and Ballona Creeks should be consistent with implementation of those TMDLs. The proposed amendment, however, requires compliance two days after the proposed hearing. This is arbitrary and capricious. Certainly, numeric limits should not be incorporated into the Permit that are inconsistent with the Malibu Creek and Ballona Creek TMDLs.	See response to comment 11.8		
11.10	The Regional Board Will Have The Benefit of the Report from the State Board's Expert Panel By the Time The Regional Board Renews the Permit	See response to comment 1.2		
11.11	There is No Need to Reopen the Permit Because the Permit	The current permit provisions do not ensure no exceedance days of the bacteria objectives to protect		

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	Already Has Sufficient Provisions to Assure Implementation of the TMDL	REC-1 use in marine waters during summer dry weather. This action simply incorporates a WLA of an adopted TMDL that clarifies how the prohibition is to be complied with and enforced for dry weather non-storm water discharges containing bacteria.		
11.12	<p>The Permit's provisions must be supported by adequate findings. Water Code §§ 13263 and 13330; Code of Civil Procedure § 1094.5. The proposed amendment does not meet this requirement. To include the proposed numeric limitations in the Permit, the Regional Board must first make the following findings to support this amendment:</p> <ol style="list-style-type: none"> 1. A finding identifying the source of the bacteria that is causing the exceedance 2. A finding that it is technically feasible to comply with the terms of this amendment 3. A finding that the terms of the amendment can be met through cost effective programs that will be accepted by the public 4. A finding that the amendment will not require the permittees to adopt controls or implement programs that go beyond the maximum extent practicable standard applicable to municipal storm water permits, 33 U.S.C. Section 1342(p)(3)(B)(iii) in order to comply with the amendment 5. A finding that the terms of the amendment are reasonably achievable 6. A finding that the Regional Board has considered all factors set forth in Water Code Section 13241 7. A finding that the amendment is reasonable in light of the Water Code Section 13241 factors 	<p>The permit provisions do contain adequate findings. Additional findings were also added following review of comments received, and a fact sheet will be prepared. The findings requested by the commenter are not necessary, and no authority is cited supporting the claim that such findings must be made. The source of the permit conditions is a previous regulation that specifically assigned waste load allocations, in the form specified, to the permittees here.</p> <ol style="list-style-type: none"> 1)No authority is cited for the proposition that the Regional Board must identify sources of bacteria that may cause exceedances before incorporating conditions in NPDES permits to require permittees to prevent the discharge of bacteria in amounts that violate standards. Nevertheless, a source analysis is already set forth in the TMDL regulation at Basin Plan Chapter 7-4. 2)The feasibility of the terms of the amendment is not before the Regional Board at this time. The waste load allocations were already established in a prior regulation, and federal regulations require that they be incorporated into the relevant NPDES permits. Those regulations, however, were adopted in contemplation of the fact that they are technically feasible. Most jurisdictions indicated their intent to comply by diverting their dry weather discharges to sanitary sewers. Many diversions have already occurred. 3)See response to comment 3.2. 4)See response to comment 3.2. 5)See response to comment 3.2. 6)See response to comment 1.5. 7)See response to comment 1.5. 	Yes	Permit Findings E.29 through E.34

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		<p>The permit contains discharge prohibitions language and receiving water limitations language that prohibit any discharges that cause or contribute to violation of WQS or WQOs, See Part 1 and 2.1.</p> <p>MEP standard is applicable only for discharges of <u>storm water</u> not to non-storm water discharges. The prohibition is applicable to <u>non-storm water</u> discharges.</p>		
11.13	<p>The evidence identified to date is insufficient to support the proposed findings that the regional board is required to make. Public notice of the proposed amendment was issued to interested parties by letter dated May 18, 2006. That letter states that the file in support of this amendment is available online at the Regional Board's website. The website contains the following documents.... The website contains or cites no evidence that supports this amendment. No staff report that summarizes the evidence to support this amendment is posted.</p>	<p>The evidence in the record does support the findings and the permit provisions. The "proposed findings" set forth in the County's comment letter are not supported by legal authority. The proposed findings are generally incorrect, and are not required to support an amendment to the permit to implement the federally approved TMDL that assigned the waste load allocations to these permittees. This permit modification specifically incorporates those waste load allocations, in the manner specified by the TMDL. The evidence supporting this action is set forth in response to comment 11.20. The commenter's reference to a staff report should actually be to a Fact Sheet, which is described in 40 CFR 124.8. A Fact Sheet will be prepared.</p>		
11.14	<p>Does this prohibition apply to all discharges under the Permit, prohibiting them from exceeding the waste loads identified in the TMDL, or only discharges to Santa Monica Bay?</p>	<p>The prohibition only applies to discharges to Santa Monica Bay beaches. The proposed language has been clarified to make this clear.</p>	Yes	Permit language, Part 1. B.
11.15	<p>Does this prohibition apply to flows at any location in the storm sewer system that discharges into Santa Monica Bay, or even broader, at any location in the Storm sewer system regardless of whether it discharges into Santa Monica Bay? The TMDL does not apply to flows at any location, but is based on exceedances at monitoring points.</p>	<p>The prohibition applies at the compliance monitoring sites identified in the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> dated April 7, 2004. The permit language has been clarified to make this clear.</p>	Yes	Permit language, Part 2.5
11.16	<p>Proposed Change NO.4 continues this ambiguity. Although</p>	<p>The winter dry weather provisions have been removed from the proposed language given that the deadline for</p>	Yes	Permit language, Parts 1. B and 2.5

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	Proposed Change NO.4 limits itself to discharges of bacteria into the Santa Monica Bay, its does not make clear whether its prohibition against winter dry-weather exceedances applies immediately or only after July 15, 2009, the date set forth in the TMDL.	compliance with these provisions is not until July 15, 2009. These provisions will be added to the MS4 permit at a later time.		
11.17	The County presumes that the proposed amendment is intended to apply only to discharges from the MS4 to Santa Monica Bay. The County further presumes that the prohibition is meant to prohibit discharges from the MS4 that cause exceedances at the TMDL's monitoring points in excess of the allowable number, and that the prohibition does not apply to winter dry-weather discharges until July 15, 2009. The proposed language does not make this clear.	The commenter is correct in its assumptions. The permit language has been clarified. See also response to comment 11.16.	Yes	Permit language, Parts 1. B. and 2.5
11.18	THE MONITORING POINTS IDENTIFIED ON PROPOSED ATTACHMENT V ARE INCONSISTENT WITH THE MONITORING POINTS DEVELOPED PURSUANT TO THE TMDL	Attachment V has been deleted and, instead, the permit language references the compliance monitoring sites identified in the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> dated April 7, 2004.	Yes	Permit language, Part 2.5 and Attachment V
11.19	By this letter, the County is notifying the Regional Board that it is not waiving its right to an adjudicatory hearing in accordance with all applicable statutory and regulatory provisions, including but not limited to Water Code Section 13263, Government Code Section 11400 et seq., Government Code Sections 11513, and 23 Code Cal. Reg. 648 et seq. The County intends to exercise its right to opening and closing statements, presentation of evidence, and examination and cross-examination of witnesses.	Government Code sections 11500 et seq. are not applicable to the Regional Board. Nevertheless the County will be authorized to present an opening and closing statement, relevant evidence, and the right to cross-examination of witnesses, subject to rules governing administrative hearings, and the appropriate discretion of the Board during the hearing.		
11.20	Because the evidence that the Regional Board staff intends to introduce at the hearing has not been identified, it is difficult to fully identify the witnesses that the County intends	All documents and exhibits that the Regional Board staff intends to rely upon in the Los Angeles Municipal Storm Water permit (NPDES Permit no: CAS004001)		

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	<p>to call at the hearing. Currently, the County requests that the following Regional Board staff person be present at the hearing to be called as witnesses by the County:</p> <p>(1) Jonathan Bishop, Executive Officer</p> <p>(2)Staff person most knowledgeable about the adoption of the Santa Monica Bay Beaches Bacteria TMDL.</p> <p>(4) Staff person most knowledgeable about the sources of bacteria being discharged into Santa Monica Bay and the causes of exceedances of the bacteria limits in Santa Monica Bay.</p> <p>Staff person most knowledgeable about the technology and other remedial measures that can be implemented to reduce bacteria discharges into the Santa Monica Bay.</p> <p>(5)Staff person most knowledgeable about staff efforts to meet with municipalities and responsible jurisdictions to determine efforts to comply with the Santa Monica Bay Beaches TMDL to date.</p> <p>(6)Staff person most knowledgeable about the municipalities' and responsible jurisdictions' efforts to comply with the Santa Monica Bay Beaches TMDL to date.</p>	<p>modifications on July 13, 2006 will be brought to the hearing. The relevant records supporting the proposed action include:</p> <ol style="list-style-type: none"> 1) Chapter 7-4 of the Basin Plan, which includes the regulatory provisions of the Santa Monica Bay Beaches Dry Weather TMDL; 2) Regional Board Resolution #2002-004, which adopted the TMDL; 3) State Water Board Resolution #2002-0149, which approved the TMDL; 4) A Notice of Approval of Regulatory Action (File No. 02-1028-03 S) from the Office of Administrative Law dated December 9, 2002, which approved the TMDL; 5) A letter from the United States Environmental Protection Agency, dated June 19, 2003, from Catherine Kuhlman, Director, Water Division, US EPA Region IX to Celestu Cantú, Executive Director, State Water Board approving the Santa Monica Bay Beaches Dry Weather TMDL; 6) The Los Angeles County Municipal Separate Storm Sewer System Permit, Order # 01-182. <p>These documents are posted online at: http://www.waterboards.ca.gov/losangeles/html/bpaRes/bpa.html and http://www.waterboards.ca.gov/losangeles/html/programs/stormwater/lams4Documents.html.</p> <p>Additionally, the Regional Board staff intends to rely upon the testimony of witnesses, staff, parties, and interested persons that may be presented at the hearing, and all comment letters submitted in this matter. The Regional Board staff reserves the right to introduce other evidence in rebuttal of arguments or comments presented by anybody at the hearing.</p> <p>The following staff persons are the most knowledgeable</p>		

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		about this matter and will be present at the hearing: Jonathan Bishop, Xavier Swamikannu, Carlos Urrunaga, Dan Radulescu, and Renee DeShazo. This response related to the hearing and record as generated in preparation for the Regional Board's consideration on July 13, 2006. Additional materials may be included in the record based upon what staff believes is appropriate after comments and proceedings subsequent to July 13, 2006 have been analyzed.		
11.21	Because the evidence that the Regional Board staff intends to introduce at the hearing has not been identified, it is difficult to provide the Board with an estimate of the total amount of time this hearing might take. The County also has no estimate as to the time necessary for other parties' witnesses. The County currently estimates that it will need 8 to 16 hearing hours for its portion of the case, subject to modification once the Regional Board staff's evidence is identified.	See response to comment 11.20. The County will be provided an adequate amount of time to present its evidence and witnesses.		
11.22	The County requests that all documents and exhibits on which Regional Board staff intends to rely be identified and made available for inspection and copying prior to the hearing. The County further requests that all such documents be marked as exhibits and be present at the hearing for use at the hearing	See response to comment 11.20. All documents and exhibits that the Regional Board staff intends to rely upon will be identified and brought to the hearing.		
11.23	For the above reasons, the Regional Board should defer consideration of the proposed amendment. Incorporation of provisions implementing the Santa Monica Bay Beaches Bacteria TMDL should be done at the time of the Permit's renewal and in coordination with the provisions relating to other TMDLs.	No compelling reason has been set forth to delay consideration of the proposed amendment. Awaiting the Permit's renewal would be inconsistent with the terms of the TMDL, which requires compliance by July 15, 2006.		
12.1	The Bureau of Sanitation of the City of Los Angeles (Bureau) appreciates the opportunity to comment on the	Comment noted.		

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	proposed re-opening of the County of Los Angeles Municipal Storm Water Discharge Permit (Permit) to include a dry weather prohibition on flows containing bacteria to the Santa Monica Bay.			
12.2	The Bureau recognizes Santa Monica Bay as a vital regional asset, and the restoration and protection of all of our beaches and waters are among our highest priorities. As you are aware, the Bureau has taken the lead in pursuing the goals of the City's Integrated Resources Plan (IRP) and has already implemented numerous actions to protect and improve water quality throughout the City.	The Regional Board acknowledges the actions taken to date by the City of Los Angeles to improve water quality and achieve water quality standards at SMB beaches.		
12.3	The Mayor and the City Council have placed a high priority on environmental issues facing the City. Consequently, the City has taken a national leadership position by being in the forefront of stormwater mandates and by complying with them in the most innovative and cost effective manner through a stakeholder-driven process. Thus far, the City has been in full compliance with its Permit requirements since the early 1990's when the very first stormwater permit was issued. The City has led the advancement of the stormwater arena by investing resources and collaborating with major key stakeholders, such as the Regional and State Water Boards, environmental organizations, and scientific organizations (i.e., Southern California Coastal Water Research Project (SCCWRP), Water Environment Research Foundation (WERF), etc.).	See response to comment 12.2		
12.4	This is a testament to the high value that the City places on: 1) clean beaches, 2) protecting public health, and 3) the economic engine of our local economy. In support of these	See response to comment 12.2		

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	<p>initiatives, the Mayor and the City Council helped pass Proposition 0 in November of 2004, a \$500-million water bond to improve the quality of the City's water bodies by complying with stormwater mandates. Thus far, the two Proposition 0 oversight committees have identified 21 projects throughout the City that are multi-benefit in nature, including helping to improve water quality in the City's receiving waters. This is in addition to our annual budget of approximately \$40-million to stay in compliance with stormwater regulations. Lastly and most importantly, we believe we are ready for the July 15th deadline of the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and we will do everything in our power to comply with that mandate.</p>			
12.5	<p>The Bureau, however, believes that the process of re-opening the Permit to include the Santa Monica Bay Beaches Bacteria TMDL's dry weather flow requirements is a complex one and we require more time to have discussions with the Regional Board, Los Angeles County, other affected municipalities, and environmental organizations to fully analyze the impact of such inclusion in the Permit. Thus, we urge you to allow more time for these discussions to take place in a collaborative manner.</p>	<p>See response to comment 11.3. Furthermore, the summer dry weather provisions of the TMDL are straightforward.</p> <p>Similar non storm water prohibition conditions were contained in earlier LA MS4 permits starting with the 1990 permit that required proof that the municipalities possessed the mandated legal authority to control the discharges of unauthorized non storm water flows.</p>		
13.1	<p>The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant, which is contrary to USEPA policy as it</p>	<p>See response to comment 1.1</p>		

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	<p>relates to municipal NPDES permits. The USEP A has stated that municipal NPDES permits are to address pollutants including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, <i>it</i> still qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).</p>			
13.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits</p>	<p>See response to comment 1.2</p>		
13.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal</p>	<p>See response to comment 1.3</p>		

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	<p>Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches. It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days) the municipality in question could be in violation of the prohibition on illicit discharges.</p> <p>Further, it can be construed from the phrasing that any discharge anywhere in the MS4 system with elevated bacteria levels could be considered a violation of the MS4 municipal stormwater permit, even if it does not result in an exceedance of TMDL limitations.</p>			
13.4	<p>The addition of paragraph 5 to Part 2... "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standard;. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance, Paragraph 5 Supply says that a waste load allocation must be met - period.</p>	See response to comment 1.4		
13.5	<p>Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a</p>	See response to comment 2.5		

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	difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.			
13.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
13.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
13.8	If the Regional Board ultimately decides to incorporate the bacteria TMDL WLA into the current Los Angeles County MS4 Permit, it should place this requirement under Part 3. <i>Storm Water Quality Management Program (SWQMP) Implementation</i> instead of discharge prohibitions.	See response to comment 1.7		
14.1	The existing NPDES permit is due to expire in December, 2006. Adding the TMDL at this time will mean the affected agencies will need to modify the SQMP to insure that the BMPs being employed, to meet the TMDL requirements, are part of the SQMP. Although it may not be required that the SQMP be modified, not doing so would lessen any defense against possible fines if violations of the TMDL requirement were to occur. A significant expenditure resources will be required to make these changes. However, these changes could become obsolete in six months once the new NPDES is issued and the SQMP is once again modified to meet the new permit requirements. This process could result in a significant waste of funds that could otherwise be used to improve water quality.	See response to comment 11.23. The commenter has not proffered any evidence to support the suggestion that the implementation approach to complying with the TMDL's provisions would be any different after December 2006, than it is for today, nor to support its claim that the provisions would be obsolete after that time.		
14.2	The TMDL will be reopened in July 2007, and the	The proposed language has been revised to remove the	Yes	Permit language,

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	<p>requirements of the TMDL could change, thus requiring the NPDES to be reopened again so that there is consistency in the two regulations.</p> <p>If the TMDL is changed, and the NPDES reopened, the SQMP will have been modified three times in 12 months. Again, there is the potential of wasted effort and funds that could be better spent on improving water quality.</p>	<p>provisions related to the winter dry weather waste load allocations, since these allocations may be revised during the reconsideration of the TMDL in 2007. Furthermore, the compliance deadline for the winter dry weather allocations is not until July 15, 2009. Provisions related to the winter dry weather waste load allocations will be incorporated into the permit at a later date.</p> <p>It is unlikely that the summer dry weather waste load allocations will be revised during the reconsideration of the TMDL in 2007. This is because the Dry Weather TMDL states that, "In order to fully protect public health, no exceedances are permitted at any shoreline monitoring location during summer dry weather (April 1 to October 31). In addition to being consistent with the two criteria, waste load allocations of zero (0) exceedance days are further supported by the fact that the California Department of Health Services has established minimum protective bacteriological standards – the same as the numeric targets in this TMDL – which, when exceeded during the period April 1 to October 31, result in posting a beach with a health hazard warning (California Code of Regulations, title 17, section 7958)." Therefore, the provisions of the permit related to the TMDL summer dry weather waste load allocations will not need to be modified more than once.</p>		Parts 1.B and 2.5
14.3	This is the first time actual numerical limits are being added to the permit. As such, the task of insuring that the requirements of the TMDL are accurately included is critically important. To have this assurance, it is necessary that adequate time and interaction between the regulating and regulated parties be incorporated into the process. The method being employed by the current process satisfies neither of these important considerations.	The permit does already contain prohibitions, both in Parts 1 and 2, which are, as the provisions, numeric limits of zero. These include at least Part 1, Part 2.1. and 2.2. The process selected is both adequate and legally appropriate. See also response to comment 12.5		
14.4	Incorporating the requirements of the TMDL into the	The permit language has been revised to reference the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated</i>	Yes	Permit language, Part 2.5 and

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	<p>NPDES is a very complicated task. The dry weather TMDL included two post-approval activities (Coordinated Shoreline Monitoring Plan – CSMP and Documentation of 342 discharges into Santa Monica Bay) that both clarified and expanded the requirements of the TMDL, and it is necessary that they be carefully reviewed. However it appears, based on the proposed language, that neither was reviewed. The comments below point out problems caused by the lack of this review, and recommend additional language to correct some of these problems. However, due to the short review period it is most likely that other corrections are needed.</p>	<p><i>Shoreline Monitoring Plan</i> dated April 7, 2004, which was developed by responsible jurisdictions and agencies as a requirement of the Dry Weather TMDL. Attachment V has been deleted and, instead, the permit language relies upon the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> and the compliance monitoring sites contained therein.</p>		Attachment V
14.5	<p>The new Part 1.B. appears to be misstating the requirements of the TMDL. Waste Load Allocations have been assigned to compliance monitoring locations as indicated in Attachment V. Waste Load Allocations are in terms of days where water quality objectives are exceeded in the <i>wave wash</i>, not in the <i>MS4 flow</i>. However the paragraph, as written, states that the discharge of flows in the MS4 cannot exceed water quality objectives. This could be interpreted to mean that discharge from one MS4 into another MS4 or a discharge of an MS4 into Los Angeles Harbor is prohibited if it exceeds waste load allocations. Also, the 'Santa Monica Bay Beaches Dry-Weather TMDL' is not defined in the NPDES permit. There are many documents in existence with this name on them. The new Part 1.B should be modified as follows:</p> <p><i>Part 1.B. Discharge of summer dry weather and winter dry weather flows from MS4s into Santa Monica Bay that cause exceedences of bacteria water quality objective established in the Basin Plan above the waste load allocations established herein is prohibited.</i></p>	<p>The permit language has been clarified to indicate that non storm water discharges from MS4s <u><i>into Santa Monica Bay that cause or contribute to exceedance of the bacteria Receiving Water Limitations set forth in Part 2.5</i></u> is prohibited.</p>	Yes	Permit language, Part 1. B.

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14.6	<p>To insure clarity as to the applicability of these new requirements, it is important to define what is meant by the term "Santa Monica Bay." The technical limits of the bay typically would not extend around the Palos Verdes Peninsula to Outer Cabrillo Beach. The following definition should be added Part 5:</p> <p><i>Santa Monica Bay is defined as all beaches from the Los Angeles/Ventura County line south to the Outer Cabrillo Beach located just south of the Palos Verdes Peninsula</i></p>	<p>The proposed language has been revised to include a definition of "Santa Monica Bay".</p>	Yes	<p>Permit language, new footnote to Part 1. B.</p>
14.7	<p>The TMDL references the term "wave wash" in regard to locations where storm drains and creeks empty into the ocean, however the CSMP provides additional clarification. To insure that the NPDES permit compliance determination is correct, the definition of this term must be added to the permit. The following definition should be added to Part 5:</p> <p><i>Wave wash refers ankle deep water on an incoming wave. Samples collected for determining compliance with the waste load allocation requirements of Part 2.5 shall be taken in the wave wash.</i></p>	<p>The proposed language has been revised to include a definition of wave wash and to state that samples collected for determining compliance must be processed in accordance with the sampling procedures and analytical methodology set forth in the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i>.</p>	Yes	<p>Permit language, new footnote to Part 2.5</p>
14.8	<p>Part 2.1 states that discharges contributing to violation of water quality objectives are prohibited. However, the new Part 2.5 allows the violation of water quality objectives a defined number of times. Additional language is required to address this inconsistency. Part 2.1 should be modified as follows:</p> <p><i>Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited except as provided herein.</i></p>	<p>These two parts are not inconsistent. This is because the Regional Board modified the bacteria Water Quality Standards concurrently with the adoption of the TMDL to allow for some exceedances of the single sample bacteria objectives based on a reference system/antidegradation approach. The new implementation language associated with the single sample bacteria objectives set to protect REC-1 states that the appropriate number of allowable exceedance days is to be determined through the TMDL development process.</p>	Yes	<p>Permit language, Parts 1. B. and 2.5</p>

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		Furthermore, the perceived inconsistency has been eliminated, since the provisions related to the winter dry weather waste load allocations have been removed from the proposed language.		
14.9	It should clearly state that the waste load allocations become effective at a future date.	The provisions related to implementing the winter dry weather waste load allocations have been removed from the proposed language. Therefore, it is not necessary to include provisions stating that the winter dry weather waste load allocations become effective at a future date.	Yes	Permit language, Parts 1. B. and 2.5
14.10	It should state that Basin Plan bacteria water quality objectives apply.	The proposed language has been revised to establish Receiving Water Limitations based on the Basin Plan bacteria objectives and that implement the summer dry weather waste load allocations set forth in the TMDL.	Yes	Permit language, Part 2.5
14.11	There is no definition of the "Reference Site." Attachment V lists Leo Cabrillo Beach as the "Reference Beach." Therefore, specific mention of the "Reference Beach" should be provided. "Reference Site" should not be used.	The language regarding "reference site" has been removed, since it related specifically to the provisions associated with implementing the winter dry weather waste load allocations.	Yes	Permit language, Parts 1. B. and 2.5
14.12	The NPDES permit does not define the "historical bacteriological data." These limits are listed in Attachment V for the specific monitoring locations. Therefore, making reference to "historical bacteriological data" in 5.b.2 is not necessary.	The reference to historical bacteriological data in 5.b.2 has been removed along with the other provisions related to implementing the winter dry weather waste load allocations.	Yes	Permit language, Part 2.5
14.13	Historical data used to establish the anti-degradation limits only applies to specific monitoring locations, therefore the term should not be so broadly used.	See response to comment 14.12		
14.14	Attachment V lists the waste load allocation for each compliance location based on the current "Reference Beach" and anti-degradation data.	Attachment V has been deleted from the proposed language. The Receiving Water Limitations established to implement the summer dry weather waste load allocations are described in Part 2.5.	Yes	Permit language, Part 2.5, Attachment V
14.15	Santa Monica Bay Beaches Dry-Weather TMDL" is not defined in the NPDES permit. There are many documents in existence with this name. Therefore, it should be better defined if used.	The proposed language has been revised to reference the specific tables in the Basin Plan that include the regulatory provisions of the Santa Monica Bay Beaches Dry Weather TMDL.	Yes	Permit language, Parts 1. B. and 2.5
14.16	Based on the above, new paragraph 2.5 should be modified	The proposed language has been revised to remove the provisions related to implementing the winter dry weather	Yes	Permit language, Part 2.5

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	<p>as follows:</p> <p><i>5. Discharge of bacteria into Santa Monica Bay that cause exceedances of waste load allocations is prohibit as specified in Part 1.B. and as indicated below.</i></p> <p><i>a. After July 15, 2006, during the summer dry weather (April 1 to October 31), discharges into the Santa Monica Bay shall not cause any exceedances of the single sample bacteria water quality objectives contained in the Basin Plan;</i></p> <p><i>b. After July 15, 2009, during the winter dry weather (November 1 to March 31), discharges into the Santa Monica Bay shall not cause exceedance days greater than the "Reference Beach" (Leo Carrillo Beach) or the waste load allocation listed in Attachment V, whichever is less.</i></p> <p><i>c. After July 15, 2006, and July 15, 2009, during summer or winter dry weather respectively, discharges into the Santa Monica Bay shall not result in any exceedances of the geometric mean bacteria water quality objectives contained in the Basin Plan.</i></p>	<p>waste load allocations. The remaining language in Part 2.5 has been revised to establish Receiving Water Limitations based on the applicable Basin Plan bacteria objectives that implement the summer dry weather waste load allocations set by the TMDL. Furthermore, Part 2.5 states that during summer dry weather there shall be no discharges of bacteria from MS4s into the Santa Monica Bay that cause or contribute to exceedances in the wave wash of the applicable bacteria objectives.</p>		
14.17	<p>The CSMP is a very important document that clarifies and expands on the TMDL resolution. This document needs to be reviewed carefully. The CSMP establishes specific protocols for collecting and analyzing samples for use in determining compliance. One important aspect is that laboratories need to be certified by participating in an inter-laboratory calibration exercise before they can be used for compliance sample analysis. To insure consistency in compliance data, the following paragraph should be added to the end of the new Part 2.5:</p> <p><i>Compliance Determination: Compliance with the Waste</i></p>	<p>A new finding has been added, stating that compliance with the Receiving Water Limitations contained in the order will be determined using data obtained in conformance with the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i>.</p>	Yes	Permit finding E.34

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	<p><i>Load Allocations shall be determined using monitoring data obtained in conformance with the Coordinated Shoreline Monitoring Plan (CSMP) approved by the Regional Board Executive Officer on April 28, 2004.</i></p>			
14.18	<p>The TMDL requirements are being added to an MS4s permit. There are non-point sources that could contribute to exceedances of water quality objectives that do not discharge into MS4s. Therefore, if flows with bacteria that discharge from MS4s to a compliance location are removed, provisions must be included so that the Permittees are not in violation of the permit. The following paragraph should be added to the end of the new Part 2.5.:</p> <p><i>Permittees owning MS4s that discharge into Santa Monica Bay for which dry weather discharges with bacteria have been eliminated by treatment or diversion shall not be in violation with this order even if the Waste Load Allocation is exceeded at an associated compliance location.</i></p>	<p>New findings have been included to address these concerns regarding "safe harbor" provisions if a discharge from a MS4 has been diverted or treated by the Receiving Water Limitations are still being exceeded at a compliance monitoring site.</p>	Yes	Permit finding E.31
14.19	<p>The NPDES permit monitoring plan includes requirements to monitoring the Santa Monica Bay shoreline by the City of Los Angeles. The protocols specific in the permit are in conflict with the CSMP. This conflict needs to be reconciled. If monitoring by the City of Los Angeles is to continue unchanged, it needs to be clearly specified that compliance with the new TMDL regulations is determined by the CSMP.</p>	See response to comment 14.17		
14.20	<p>Some inaccurate or ambiguous information such as in the footnote "" which indicated that a re-opener is scheduled for two years after effective date of TMDL should be</p>	<p>Attachment V has been deleted from the proposed language. The ambiguous information identified by the commenter was in footnotes to this Attachment.</p>	Yes	Permit language, Attachment V

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	removed; footnote "Note" which indicates the rain days are determined at the LAX meteorological station needs clarification; and in the table title that uses the term Bacterial Indicators, there is not definition for Bacterial Indicators.			
14.21	In the CSMP, the responsible agencies selected a weekly shoreline monitoring frequency. Therefore, the "daily sampling" waste load allocations are not relevant.	Attachment V, which contained the "daily sampling" waste load allocations, has been deleted from the proposed language.	Yes	Permit language, Attachment V
14.22	Since the waste load allocation for all discharges during Summer Dry Weather is the same, there is no need to list these values in Attachment V.	See response to comment 14.21		
14.23	The monitoring of the compliance sites under the CSMP is not exclusively being conducted by the three agencies listed in Attachment V.	See response to comment 14.21. The proposed language has been revised to reference the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> , which identifies all the agencies conducting monitoring of the compliance monitoring sites.	Yes	Permit language, Part 2.5
14.24	Not all of the Subwatersheds listed in Attachment V are correct. DHS (114) and LACSDMC are now included in the "Redondo" subwatershed not the "Hermosa" and "Palos Verdes" subwatersheds.	See response to comment 14.23. The <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> reflects the corrections to the subwatersheds identified by the commenter.	Yes	Permit language, Part 2.5
14.25	A new table should be included as a new Attachment V with the title "Waste Load Allocations." The table would not include the "Subwatershed," "Summer Dry Weather," and "Daily sampling (No days)" columns, footnotes, names of agencies, and other irrelevant information as indicated above.	Attachment V has been deleted from the proposed language. Instead the proposed language establishes Receiving Water Limitations based on the applicable bacteria objectives in the Basin Plan that implement the summer dry weather waste load allocations set by the TMDL. Additionally, the proposed language references the <i>Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan</i> , which includes the compliance monitoring sites to be used to determine compliance with the Receiving Water Limitations in the order.	Yes	Permit language, Part 2.5 and Attachment V
14.26	The existing NPDES permit does not require monitoring that will show if a compliance location is in violation or not.	See response to comment 14.17		

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	Monitoring data that might be collected outside the permit should not be allowed to show compliance because of the special protocols that are required.			
14.27	Compliance with these new requirements will be based on "dry weather" data therefore, the NPDES permit must clearly state the definition of "dry weather." Dry weather in the TMDL is defined as non-"wet weather" days. The CSMP specifies that "wet weather" is determined using rainfall information collected at several different rain gauge stations. The NPDES permit must reflect the special protocols of the CSMP.	The permit language has been revised to include a definition of "dry weather".	Yes	Permit language, Part 1. B., new fn. 1
14.28	Two major discharges into Santa Monica Bay (Malibu Creek and Ballona Creek) have their own Bacteria TMDL and compliance schedule. There should be some provision in the Permit to insure that compliance locations impacted by these two discharges are not out of compliance until these two discharges are required to be in compliance.	See response to comment 11.8	Yes	
14.29	The CSMP established two types of monitoring locations: "Open Beach" and "Point Zero." The CSMP determined that the "Open Beach" locations were not associated with an MS4 outlet. Therefore, it is not appropriate to include the "Open Beach" locations in an MS4 Permit	A new finding has been included to describe the circumstances under which the Regional Board would generally grant "safe harbor" to a permittee(s) where the Regional Board determines that the violation of the Receiving Water Limitations did not result from the MS4.	Yes	Permit finding E.31
14.30	The Los Angeles County MS4 system is very complex because of the many agencies that own facilities that ultimately discharge into the Santa Monica Bay. In many cases, the owner of the MS4 that discharges directly into the Santa Monica Bay is the Los Angeles County Flood Control District. However, they have little if any authority	New findings have been included to discuss the procedure to be undertaken for enforcement actions, which includes as a first step issuance of an appropriate investigative order. Additionally, several "safe harbor" provisions have been included that may be relied upon, depending upon the outcome of the investigative order.	Yes	Permit findings E.31 and E.32

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	over what enters the MS4 because they have no land use authority. The manner in which the TMDL is put into the MS4 permit could lay the total responsibility of compliance on the owner of the discharge. For this reason, careful consideration needs to be taken regarding how these regulations are placed into the NPDES permit.			
14.31	In conclusion, the addition of numerical limits does not appear appropriate in a permit that is derived from regulations that require reduction of pollutants in MS4s to the maximum extent practical. Especially when it is not known that implementing BMPs that meet this standard have any possibility of meeting the numeric limits. However, if these limits are to be added, a careful and deliberate process should be used to insure that it is done correctly. Again, thank you for this opportunity to comment. I would appreciate a response that indicates how the above concerns will be addressed	See response to comments 1.1, 3.2, and 11.4. Staff understands that most compliance will occur through diversions, not BMPs. Staff is confident that the process employed will be both careful and deliberate, and meet all legal requirements. MEP standard is applicable only for reduction of pollutants in discharges of storm water, not to non storm water discharges.		
15.1	The City recommends only incorporating language regarding the summer dry weather TMDL at this time and incorporating the winter dry weather language at the time .the next MS4 permit is issued/renewed	The proposed language has been revised to remove the provisions related to implementing the winter dry weather waste load allocations.	Yes	Permit language, Parts 1. B. and 2.5
15.2	The proposed new discharge prohibition language seeks to prohibit discharge of summer AND winter dry weather "flows" containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL even though the winter dry weather allocations do not go into effect until July 15, 2009, while the summer dry weather allocations go into effect on July 15, 2006. The City is concerned that if the discharge prohibition language were incorporated as is, the City could be required to enforce the winter dry weather discharge prohibitions immediately	See response to comment 15.1		
15.3	Alternatively, the Board should specifically reference the	See response to comment 15.1		

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	<p>compliance dates of the summer and winter dry weather Santa Monica Bay Beaches Bacteria TMDL in the discharge prohibition and receiving water limitation language, itself-the City does not believe it is sufficiently clear to show the deadlines only in attachment V.</p>			
15.4	<p>The wording of the new discharge prohibition language is ambiguous. The proposed language prohibits "discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations". The term "flows" is not defined and the City is concerned that this could be interpreted to mean that any water flowing anywhere in the storm drain system or leading to the storm drain system is subject to the bacteria concentration limits in the TMDL. More appropriate wording for the prohibition would include language that prohibits "discharges to the storm drain system that cause or contribute to exceedances of waste load allocations", in essence to retain the compliance point for bacteria concentrations at the wave wash in the ocean and still require the City to possess authority to require elimination of discharges that contribute to violations of the TMDL.</p>	<p>See response to comment 14.5</p>		
16.1	<p>The current receiving water limitations language in the permit (Part 2. 1.) already includes the statement that "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited. "Since TMDLs are established to attain and maintain water quality objectives, and since the Santa Monica Bay Beaches Bacteria TMDL has been incorporated as an amendment to the Los Angeles Regional Basin Plan which sets these Water Quality Standards, it would</p>	<p>Part 1 and 2.1 of the permit prohibits the discharge of unauthorized non storm water flows containing pollutants that cause or contribute to the violation of WQS or WQOs. The TMDL contains a waste load allocation calculated to meet the existing water quality standards. It is not redundant to include more precise requirements that are directed toward ensuring specific standards are protected at specific times and locations.</p>		

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	<p>seem that Part 2.1. of the existing permit would be sufficient to establish that discharges which cause or contribute to violation of an approved TMDL are prohibited.</p>			
16.2	<p>The City is concerned that the wording of the new discharge prohibition language is ambiguous. The proposed language prohibits "discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations". The term "flows" is not defined either in the proposed language or in the permit and the City is concerned that this could result in the interpretation that any water flowing within the storm drain system or leading to the storm drain system is subject to the bacteria concentration limits in the TMDL. The City recommends that if the Board believes an additional prohibition is necessary, the wording should be revised to prohibit "dry weather discharges to the storm drain system that cause or contribute to the violation of waste load allocations" in essence to retain the compliance point for bacteria concentrations at the wave wash in the ocean.</p>	See response to comment 14.5		
16.3	<p>The proposed new discharge prohibition language seeks to prohibit discharge of summer AND winter dry weather "flows" containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL even though the winter dry weather allocations do not go into effect until July 15, 2009, while the summer dry weather allocations go into effect on July 15, 2006. The City is concerned that if the discharge prohibition language were incorporated as is, the City could be required to enforce the winter dry weather discharge prohibitions immediately. The City recommends only incorporating</p>	See response to comment 15.1		

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	language regarding the summer dry weather TMDL at this time and incorporating the winter dry weather language at the time the next MS4 permit is issued/renewed.			
17.1	The re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant, which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated, that municipal NPDES permits are to address pollutants - including those, subject to total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative, trial and error, basis. Although the limitation is couched as a discharge prohibition (illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric, limit because it includes a "waste load, allocation" (numeric target for bacteria).	See response to comment 1.1		
17.2	The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.	See response to comment 1.2		
17.3	The proposed new language for Part I.B" which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all, Los Angeles County MS4 Permittees, as the following illustrate:	See response to comment 1.3		

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	<p>"Discharge of summer dry weather and winter - dry weather flows containing, bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-weather TMDL is prohibited."</p> <p>Based on this language, we conclude this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. The proposed MS4 Permit language does not expressly say this discharge prohibition applies only to Santa Monica Bay Beaches.</p>			
17.4	<p>Also, all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board Of third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p> <p>Further, it can be construed from the phrasing that any discharge anywhere in the MS4 system with elevated bacteria levels could be considered a violation of the MS4 municipal stormwater permit, even if it does not result in an exceedance of TMDL limitations.</p>	See response to 14.5		
17.5	<p>The addition of paragraph 5, to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new</p>	See response to comment 1.4		

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	ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met, period.			
17.6	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
17.7	The City believes, that the introduction of the Santa Monica Beaches Bacteria TMDL in, the Los Angeles County MS4 Permit exceeds the federal standard and is subject to economic analysis.	See response to comment 1.5		
17.8	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
17.9	If the Regional Board ultimately decides to incorporate the bacteria TMDL WLA into the current Los Angeles County MS4 Permit, it should place this requirement under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i> instead of discharge prohibitions.	See response to comment 1.7		
18.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it	See response to comment 1.1		

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	<p>relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).</p>			
18.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.</p>	See response to comment 1.2		
18.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles CotJntyMS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial</p>	See response to comment 1.3		

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	TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.			
18.4	It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.	See response to comment 14.5		
18.5	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met period.	See response to comment 1.4		
18.6	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
18.7	The City believes that the introduction of the Santa Monica	See response to comment 1.5		

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	Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.			
18.8	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
18.9	<p>It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement - along with the wet weather WLA - under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i>. Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i>, and under that, <i>Santa Monica Beaches Bacteria TMDL</i>.</p> <p>To allow the proposed dry weather 5MB Bacteria TMDL to be placed under the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to invite administrative and, possibly, legal challenge.</p> <p>The City looks forward to the Regional Board's reconsideration of addressing bacterial exceedances for Santa Monica Bay within the context of a proper and reasonable process and mechanism.</p>	See response to comment 1.7		

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19.1	<p>The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants - including those subject total maximum daily loads (TMDLs) through the use of best management practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (a viz., a numeric target for bacteria).</p>	See response to comment 1.1		
19.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.</p>	See response to comment 1.2		
19.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p>	See response to comment 1.3		

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	<p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL. To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p> <p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p> <p>Further, it can be construed from the phrasing that any discharge anywhere in the MS4 system with elevated bacteria levels could be considered a violation of the MS4 municipal storm water permit, even if it does not result in an exceedance of TMDL limitations.</p>			
19.4	<p>The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph</p>	See response to comment 1.4		

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	5 simply says that a waste load allocation must be met - period.			
19.5	Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
19.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.	See response to comment 1.5		
19.7	The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		
19.8	If the Regional Board ultimately decides to incorporate the bacteria TMDL WLA into the current Los Angeles County MS4 Permit, it should place this requirement Under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i> instead of discharge prohibitions.	See response to comment 1.7		
20.1	The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant which is contrary to USEPA policy as it relates to municipal NPDES permits. The USEPA has stated that municipal NPDES permits are to address pollutants – including those subject total maximum daily loads (TMDLs) through the Use of best management	See response to comment 1.1		

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	<p>practices (BMPs) to be implemented on an iterative basis ("trial and error"). Although the limitation is couched as a discharge prohibition (viz., an illicit discharge) and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation" (viz., a numeric target for bacteria).</p>			
20.2	<p>The Regional Board's inclusion of a numeric limit in the Los Angeles MS4 NPDES Permit preempts the State Water Resources Control Board's effort to establish a policy on numeric limits in MS4 Permits.</p>	See response to comment 1.2		
20.3	<p>The proposed new language for Part 1.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4 is written in a manner that applies the dry weather waste load allocation (WLA) for bacteria for Santa Monica Beaches to all Los Angeles County MS4 Permittees, as the following illustrates:</p> <p>"Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."¹</p> <p>From the face of this language, one cannot help but conclude that this requirement applies to all non-storm water discharges, regardless of whether a municipal Permittee is subject to the Santa Monica Beaches Bacterial TMDL To put it another way, the proposed MS4 Permit language does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.</p>	See response to comment 1.3		

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	<p>It should also be noted that all Permittees that fail to meet this waste load allocation would also be placed into a state of non-compliance. The Regional Board or third party could, for example, sample discharges and should those discharges exceed the WLA (expressed in exceedance days), the municipality in question could be in violation of the prohibition on illicit discharges.</p>			
20.4	<p>The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met - period.</p>	See response to comment 1.4		
20.5	<p>Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be a difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.</p>	See response to comment 2.5		
20.6	<p>The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic analysis.</p>	See response to comment 1.5		
20.7	<p>The City believes that the introduction of Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4</p>	See response to comment 1.6		

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	Permit is contrary to the California Environmental Quality Act (CEQA) because no "Environmental Impact Report" equivalent was performed.			
20.8	<p>It is understood that the Regional Board wishes to incorporate the dry weather bacteria TMDL WLA into the current Los Angeles County MS4 Permit. However, it should, instead, place this requirement - along with the wet weather WLA under Part 3., <i>Storm Water Quality Management Program (SWMP) Implementation</i>. Specifically, it should add Paragraph H.1, <i>Watershed Specific Programs</i>, and under that, <i>Santa Monica Beaches Bacteria TMDL</i>.</p> <p>To allow the proposed dry weather Santa Monica Beaches Bacteria TMDL to be placed under the Discharge Prohibition and Receiving Water Limitations sections of the MS4 Permit is likely to invite administrative and, possibly, legal challenge.</p>	See response to comment 1.7		
21.1	At its June 14, 2006 meeting, the Executive Advisory Committee (EAC) adopted a motion requesting that a letter of comment be sent in opposition to the proposed reopening of the Los Angeles Municipal Storm Water Discharge Permit (MS4) Permit, to insert indicator bacteria numeric exceedance limits for dry-weather flows into Santa Monica Bay. The EAC is deeply concerned by the potential precedent for inserting numerical standards into a general (MS4) NPDES permit, rather than using Best Management Practice (BMP) to the Maximum Extent Practicable (MEP) implementation plans. We encourage the Board to reconsider, then support and accept the Jurisdictional Implementation Plans to control sources of indicator bacteria.	See response to comment numbers: 14.31.		

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21.2	<p>As stated during the TMDL hearings, indicator bacteria are not human pathogens and there is a growing recognition that they may only be poor indicators of human health risk. The Southern California Coastal Water Research Project (SCCWRP) is currently undertaking a study (<i>STORM DRAINS AND SEDIMENTS AS RESERVIORS OF FECAL INDICATOR BACTERIA</i>) to assess (re)growth and survivorship of these microbes in sediments like those that are present in drainage systems. In several recent cases (Mission Bay and Talbert Marsh) natural sources including wildlife, decomposing aquatic vegetation, sea foam, and sediments appeared to be significant sources of indicator bacteria, rather than sewage. As stated in their November 22, 2002 letter,</p> <p style="padding-left: 40px;"><i>EPA expects that most WQBELs for NPDES-regulated municipal... Storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.</i></p>	See response to comment 11.5		
21.3	Furthermore these BMPs should be implemented through an iterative good faith source control model, as proposed by the Santa Monica Bay Jurisdictional Groups. Their approach is especially rational based on the state of knowledge regarding indicator bacteria sources and risks.	The "iterative good faith source control model" described by the commenter as proposed by the Jurisdictional Groups is specific to achieving the <u>wet weather</u> waste load allocations. While the Regional Board acknowledges that these <u>wet weather</u> implementation plans will also alleviate dry weather exceedances over time, many of the permittees indicated that for summer dry weather their planned implementation approach would be to continue their longstanding efforts to construct low flow diversions of storm drains to sanitary sewers.		
21.4	We believe that the amended wording of Part 2 of the MS4 Permit goes against the intent of the USEPA iterative process and the simple understanding of the impacted MS4	See responses to comments 11.16 and 21.3		

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	Permittees. We believe that the jurisdictional stakeholders have proposed reasonable and comprehensive BMP implementation plans that will alleviate dry-weather exceedences over time. The current wording appears to negate their intent by installing instantaneous strict numeric standards at an unexpectedly early point in the process, especially as it relates to winter conditions.			
21.5	Last year, the State Water Resources Control Board convened an expert panel to assess the utility of applying numeric standards to General NPDES Permittees statewide and their findings are expected at anytime. The term of the Los Angeles County MS4 Permit is 90% complete and the Jurisdictional Groups are already implementing their source control plans. The EAC encourages the Board to balance the benefits from rushing forward with this controversial numeric standard, when the source control efforts might be more knowledgeable managed in the next MS4 permit.	See response to comments 1.2.		
21.6	The EAC encourages elimination of Part 1.B, which is redundant with Part 2.5 and includes new language such as "flow". Part I should be reserved for distinguishing prohibited and permitted discharge types. In this case it might be seen as prohibiting a natural constituent conveyed with a permitted discharge (e.g. irrigation). Otherwise, consider using the following language "Within Santa Monica Bay subwatersheds (Attachment V), dry weather MS4 discharge containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry -Weather TMD L is prohibited."	Part 1.B. is describing a prohibited discharge, specifically a discharge in violation of Part 2.5. Part 1.B. has been modified to promote clarity.	Yes	Permit Language, Part 1. B.
21.7	The reopener language also addresses both summer and winter dry-weather discharges, but the winter discharges are unenforceable until July 15, 2009. Since a new MS4 Permit will most likely be adopted during the interim, we	See response to comment 11.16		

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	suggest deletion of those references which are non--enforceable during the foreseeable duration of this MS4 Permit Cycle. This includes the words "and winter" in Part 1B and 5C, the phrase "and winter dry weather (November 1 to March 31)" in Part 5, all of paragraph 5b, and the right most two columns of Attachment V.			
21.8	Representatives among the EAC have previously indicated that numeric TMDLs, including the proposed amendment considered here, go beyond federal standards and are therefore subject to an economic analysis, under Porter Cologne and CEQA. We encourage the Board to review the proposed MS4 Permit Amendments and if they can be interpreted to exceed federal law by instituting objectionable numeric standards, then undertake the appropriate environmental analyses that include the potential economic impacts on Santa Monica Bay MS4 Permittees.	See response to comment numbers 1.5 and 1.6.		
22.1	The language in the Board's resolution is unclear and could be interpreted to extend the bacterial limits to all of the region's water bodies.	See response to comment 1.3		
22.2	The placement of numeric limits into the NPDES Permit will open the County and the cities to third-party litigation, when they fail to meet the standards of any of the future TMDLs.	The placement of any limits in any permit, coupled with the citizen suit provisions authorized in federal law, open the County and the cities to third-party litigation—but only when they fail to abide by the permit conditions. Future TMDLs are not enforceable until they are implemented with corresponding permit conditions.		
22.3	We believe that natural levels of bacteria will be extremely difficult and expensive to reduce.	The Santa Monica Bay Beaches Bacteria TMDLs and other Bacteria TMDLs adopted by the Regional Board utilize a reference system/antidegradation approach, which allows a certain number of exceedances of the Basin Plan single sample bacteria objectives based on the exceedance frequency that results from natural sources of bacteria as observed at a reference beach or site.		

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22.4	We are also concerned that the Regional Board is moving ahead of the State Water Board on imposing numeric limits in NPDES Permits. The State Board is currently reviewing a draft report prepared by an expert panel of scientists, who were asked to examine the current viability of applying numeric limits to a wide range of NPDES Permits, including the MS4 permit. This report is due out in the next few months.	See response to comment 1.2.		
22.5	The Coalition cities are concerned that the proposed insertion of numeric limits into the MS4 Permit goes beyond the federal standards. This would subject this permit reopener to economic, social and housing reviews of Porter Cologne Sections 13200 and 13241.	See response to comment 1.5.		
22.6	We understand the need for the Regional Board and the environmental community to have enforceable requirements to improve water quality in the region. We have suggested an alternative TMDL implementation approach as part of the 2006 ROWD application through Memorandums of Understanding (MOU), between the State and Regional Boards and the County/Cities. The MOU could specify that Supplemental Environmental Programs (SEPs) are the preferred alternative for non-compliance, since they would consist of programs designed to enhance the beneficial uses in the general vicinity of any violation, instead of the requirement that fines be paid to other accounts outside of the control of the Regional Board, such as the State Cleanup and Abatement Account. The MOU could specify that the County/Cities could be required to complete special	40 CFR section 122.44(d) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. Failing to incorporate the waste load allocation into the permit in favor of an MOU would be contrary to the federal regulations.		

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	<p>studies, pollution prevention, pollution reduction, environmental restoration, environmental auditing and increased public education. This is an ideal opportunity for the Regional Board to work with the County and the Cities on this alternative TMDL implementation, in lieu of reopening the MS4 permit.</p>			
23.1	<p>On behalf of our client, Pepperdine University, we thank you for this opportunity to comment on the proposed reopening of the Los Angeles MS4 Permit. As we understand from the proposal of the California Regional Water Quality Control Board - Los Angeles Region (RWQCB), the purpose of the MS4 Permit reopening is to incorporate dry weather waste load allocations (WLAs) from the Santa Monica Bay Beaches Dry-Weather Bacteria Total Maximum Daily Load (TMDL) into the MS4 Permit. However, it would appear that the proposed modifications to the permit may prohibit previously allowable dry weather flows, including incidental landscape irrigation runoff, within the Santa Monica Bay watershed. In particular, we are concerned that without clarification the proposed language does not adopt the distinction reflected elsewhere between bacteria generated by anthropogenic sources and natural sources, and appears to apply the proposed WLAs to bacteria sources regardless of the source. We are concerned about the potential far-reaching implications of the proposed changes on Pepperdine and others similarly situated and ask that the Board take into consideration our comments and suggested changes on the RWQCB's proposal below.</p>	<p>The proposed language is not intended to prohibit <i>all</i> MS4 flows during summer dry weather. The proposed language is limited in scope to prohibit MS4 dry weather non storm water discharges containing bacteria <i>into Santa Monica Bay that cause or contribute to violations of the bacteria Receiving Water Limitations in the wave wash</i> (i.e. the point at which the storm drain or creek empties and the effluent from the storm drain initially mixes with the receiving ocean water). See also response to comment 22.3</p>	Yes	Permit language, Part 1. B.

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23.2	<p>As context for these comments, Pepperdine University operates a campus in Malibu. Although Pepperdine does not discharge to Santa Monica Bay directly, its Malibu campus does lie within the broader Santa Monica Bay watershed. Pepperdine irrigates nearly all of its developed acres at its Malibu campus with reclaimed, tertiary-treated water. Pepperdine holds NPDES permits issued by the RWQCB (Order Nos. 00-166 and 00-167) that govern a portion of its irrigation system. We believe that runoff from areas not governed by Pepperdine's specific permits likely are covered under the jurisdiction of the MS4 Permit. Although incidental runoff from the landscape irrigation system is allowed under the current language in the MS4 Permit and under Pepperdine's NPDES permits, we are concerned that the proposed language to be incorporated in the MS4 Permit may have an adverse impact on Pepperdine's ability to operate its landscape irrigation system, unless the language is further clarified.</p>	See response to comment 23.1		
23.3	<p>We believe that the proposed language for revising the MS4 Permit creates an ambiguity. The proposed language would appear to make irrigation runoff that contain levels of bacteria indicators from natural sources, which are currently permissible under the WLAs established in Santa Monica Bay Beaches Bacteria TMDL (the Dry-Weather TMDL), impermissible under the MS4 permit, as revised. We submit that on the Pepperdine Campus any potentially elevated levels of bacteria indicators would not be attributable to human-related sources. The recycled water used as a source for our</p>	<p>During summer dry weather, no exceedances of the Basin Plan bacteria objectives in the wave wash at the compliance monitoring sites located along Santa Monica Bay beaches are permissible under the WLAs established in the Santa Monica Bay Beaches Bacteria Dry Weather TMDL. As adopted, the Santa Monica Bay Beaches Bacteria TMDLs allow exceedances of the Basin Plan bacteria objectives during <i>winter dry weather</i> and <i>wet weather</i> up to the exceedance frequency observed at a reference beach. The TMDLs do not provide absolute relief from treating bacteria from non-human sources. If exceedances above that observed at a reference beach occur, agencies may choose to pursue with the Regional Board a natural sources exclusion as an alternative to the</p>		

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	<p>landscape irrigation system is tertiary treated and disinfected such that the source water has extremely low levels of bacteria, if any bacteria are present at all. No human-related bacteria are added through Pepperdine's use of the reclaimed water for irrigation purposes. However, irrigation run off leaving Pepperdine's campus is likely to have picked up bacteria indicators from natural sources- namely plants, soils, and wildlife present on campus.</p>	<p>reference system/antidegradation approach to implementing the bacteria objectives set to protect REC-1 contained in the Basin Plan.</p>		
23.4	<p>It would appear from the Dry-Weather TMDL that the Board is not seeking to require treatment of natural sources of bacteria, and therefore, a logical conclusion is that the Board is proposing to require treatment of natural bacteria sources through the reopening of the MS4 Permit. However, <u>the proposed reopening language does not make this clear.</u> The Dry-Weather TMDL states in more than one instance that the RWQCB through the TMDL is not requiring treatment of natural bacteria sources from undeveloped areas. Landscaped areas at the Pepperdine Malibu campus attract similar types of wildlife and can contain plant- and soil derived bacteria similar to open space or undeveloped areas. Therefore, it is unclear if the RWQCB is seeking through the WLAs and thus through the MS4 Permit reopening to require treatment of natural sources of bacteria from vegetated areas, such as those at the Pepperdine Malibu campus. We respectfully request the RWQCB to clarify for the MS4 Permit reopening that it is not seeking-to require treatment of natural sources of bacteria, such as those from wildlife, plants, or soils, but rather is targeting the human-derived sources of bacteria that pose an adverse</p>	<p>See responses to comments 23.1 and 23.3</p>		

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	risk to recreational uses in Santa Monica Bay.			
23.5	<p>If, contrary to the statements appearing in the Dry-Weather TMDL, the R WQCB is proposing to require treatment of natural bacteria sources through the MS4 Permit reopening, then we believe that such a requirement will interfere substantially with Pepperdine's ability to utilize reclaimed water for landscape irrigation. Pepperdine is making maximum reuse of reclaimed water as directed by the state Legislature (see e.g., Cal. Water Code sections 461, 13512, and 13550). If the RWQCB through the MS4 Permit reopening is anticipating requiring diversion or treatment of the incidental runoff from landscaping activities that are making beneficial use of reclaimed water, then such requirements would defy the Legislative directive to make beneficial use of reclaimed water. Moreover, any requirement that would force reclaimed water used for irrigation to be treated again would appear to be unnecessarily redundant and a waste of resources. Pepperdine's reclaimed water undergoes three levels of treatment plus ultraviolet disinfection prior to being utilized in the landscaping irrigation system, and the only bacteria that could be entrained in irrigation runoff would be non-human bacteria from wildlife, plants or soils. It is unlikely that additional treatment of incidental reclaimed water runoff would be necessary to protect the recreational uses of Santa Monica Bay. We request that the R WQCB clarify that Pepperdine's use of reclaimed water for irrigation purposes will not be adversely affected through the proposed MS4 Permit provisions.</p>	See responses to comments 23.1 and 23.3		

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24.1	<p><u>Adoption of attached implementation principles:</u> During the hearing on the Ballona Creek TMDL and in the supporting documents, the Agency indicated its preference for utilizing an Integrated Water Resources Approach (IRWA) to address bacteria issues, as such an approach takes a holistic view of addressing water resources issues emphasizing water-reuse and multipurpose goals of water quality Best Management Practices (BMPs). We wish to ensure that the IWRA is highlighted in the MS4 Permit reopening as a preferred approach to achieving the Santa Monica Bay dry weather WLAs. We would like to see the Agency clarify, as it did with the Ballona Creek TMDL, that natural treatment systems (e.g., grassy swales, wetlands and vegetated buffers) are consistent with an IRWA. We are submitting implementation principles similar to those that we submitted during the Ballona Creek TMDL proceedings; these principles highlight both the IWRA and natural treatment systems. We ask that the Agency explicitly adopt the attached implementation principles as part of the current proceeding.</p>	<p>The Regional Board endorses the use of an IWRA. During adoption of the Santa Monica Bay Beaches Bacteria <u>Wet Weather</u> TMDL and the Ballona Creek Bacteria TMDL, the Regional Board acknowledged that an Integrated Water Resources Approach is particularly appropriate when implementing the wet weather waste load allocations. The IWRA is particularly useful under <u>wet weather</u> conditions given the large volume of storm water that must be managed to alleviate bacteria impairments at the beaches along Santa Monica Bay. During summer dry weather, the Regional Board understood based on the input of responsible jurisdictions under the Santa Monica Bay Beaches Bacteria TMDL that low flow diversions of storm drain discharges to sanitary sewers would be heavily relied upon to achieve the waste load allocations.</p>		
24.2	<p><u>Shifting the location of the WLA provisions in the Permit:</u> We understand that the Agency has been following U.S. EPA policies regarding implementation of TMDLs through BMPs. This approach would also be consistent with the Agency's promotion of the IRWA and confirmation that natural treatment system BMPs are consistent with an IRWA. Our principal concern with the proposed MS4 Permit reopening is that it would appear that the approach being taken through the Permit changes is inconsistent with the</p>	<p>See response to comment 24.1 The iterative process would only be appropriate for the wet weather component of a TMDL, because the wet weather component relates to storm water, and the dry weather does not.</p>		

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	<p>EPA guidance and with the IRWA and natural treatment system BMPs. As an alternative to the current proposed language, which appears to establish the WLAs in the form of a prohibition within the Permit, we think that the Agency has the opportunity to take an alternative approach-namely, placing the WLAs in another section of the MS4 Permit wherein the achievement of the WLAs can be had through the implementation of BMPs through the Permit's iterative compliance loop or through other parts of the Permit that account for the practicability standard. In this way, the Agency could clarify that the proposed Permit changes are not intended and will not adversely affect the implementation of an IRWA or BMPs consistent with this approach, and that outflows from such BMPs will continue to be permissible under the MS4 Permit.</p>			
24.4	<p><u>Potential for multiple interpretations of the proposed MS4 Permit terms:</u> It is possible that the proposed modifications to the MS4 Permit may be interpreted in several ways and that the proposed terms, in their current form, may not be sufficiently clear to guide the permittees and those discharging to the storm drain system on how appropriately to implement the proposals. For example, it is unclear what the relationship is between allowable dry weather flows allowed by Discharge Prohibition Part I.A and the new proposals related to the Santa Monica Bay TMDL dry weather WLAs in Discharge Prohibition Part I.B. It is unknown if under the proposed MS4 Permit modifications permissible dry weather flows, such as outflows from wetlands and landscape irrigation runoff, are to be prohibited. Also uncertain is the application of the proposed Permit terms in Part I.B to flows in the surf zone in Santa Monica Bay versus flows upstream of the surf zone.</p>	<p>Under the new provisions, the authorized non storm water flows continue to be allowed as long they are not a source of pollutants in amounts that cause exceedances of objectives during summer dry weather. The prohibition is for non storm discharges containing bacteria during dry weather that cause or contribute to violation of WQS. See also response to comment 23.1</p> <p>Part 1. A. states that, "the Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of the above categories of non-storm water discharges are determined to be a source of pollutants by the Permittees or the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the</p>	Yes	Permit language, Parts 1. B. and 2.5

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		<p>discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs." Additionally, the new language of Part 1. B. has been revised to clarify that, "Discharges of summer dry weather flows from MS4s <i>into Santa Monica Bay that cause or contribute to violations of the bacteria Receiving Water Limitations in Part 2.5 below are prohibited</i>" (emphasis added). The new language in Part 2.5 has been revised to clarify that the application of the proposed Permit terms is the wave wash, the point at which the storm drain or creek empties and the effluent from the storm drain initially mixes with the receiving ocean water of Santa Monica Bay.</p>		
24.5	<p>The available information on the proposed MS4 Permit reopening does not appear to include a fact sheet or other report to clarify the Agency's proposal. Also, there have been no prior workshops or meetings on the proposed changes to the MS4 Permit that would potentially have clarified the Agency's intent. Should the potential ambiguity related to the proposed MS4 Permit terms not be resolved, we are concerned that the regulated community will be denied Due Process under both the U.S. and California Constitutions. With the appropriate process (including a fact sheet and a workshop on the matter) there is the possibility that the regulated community will not need to demand that the MS4 Permit reopening be held as an adjudicatory process.</p>	<p>See response to comment 11.13. Additionally, the proposal is implementing the provisions of the TMDL. During the development and adoption of the TMDL, the Regional Board held multiple technical advisory meetings, workshops and board meetings with the regulated community and the public. During these meetings and in the regulatory language of the TMDL, the Regional Board made clear that the TMDL [dry and wet weather] provisions would be primarily implemented through the MS4 Permit. Nevertheless, in response to comments, an additional workshop has been scheduled for July 21, 2006.</p>		
24.6	<p>We, therefore, are making the request discussed above that the Agency take more time to work with the regulated community so that it can be better understand what the</p>	<p>See response to comment 24.5</p>		

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	Agency's proposals mean and how the proposals might be implemented in the watershed.			
24.7	<p><u>Potential Inconsistency with an IRWA and with BMP-based approaches:</u> Despite the Agency's assertion of its preference for IRW As during the Ballona Creek TMDL proceedings, it would appear that the proposed modifications to the MS4 Permit are contrary to the IR W A. The proposed inclusion of the dry weather WLAs from the Santa Monica Bay TMDL appears in the prohibitions section of the MS4 Permit; this gives the impression that outflows from natural treatment system BMPs (such as wetlands and riparian habitats) implemented consistent with an IR W A could be prohibited. Flows from these types of BMPs are currently allowed by the MS4 Permit. To prohibit such flows could significantly impair the ability to implement healthy natural treatment systems, as such BMPs rely upon flow-through of water to function properly. Thus, it seems inconsistent for the Agency to promote BMPs and IR W As in one rulemaking proceeding and then establish permit terms that would prevent the implementation of these BMPs or IRWAs.</p>	See responses to comments 24.1 and 24.4		
24.8	<p>Additionally, by including the proposed Permit modifications as a prohibition, it is unclear if the Agency meant for the Permit terms to be subject to the "maximum extent practicable" standard applicable to other parts of the Permit pursuant to federal Clean Water Act section 402(p)(3)(B)(iii). Implementation of the MS4 Permit under this federal standard has been accomplished through the BMP-based approach established throughout the remaining sections of the Permit, with the discharge prohibitions</p>	<p>Compliance is anticipated and has been commenced by many jurisdictions through diversion of dry weather discharges from MS4s to sanitary sewers. Diverting a discharge is not a "BMP" or a management practice--it is a structural change that is either undertaken or not. If diversions are used, there is nothing to iterate in the "iterative process", and BMPs would not be used. The TMDL does contemplate iterative implementation to the dry weather waste load allocations. Those waste load allocations are expressed as exceedance days, that is,</p>		

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	<p>section of the Permit limited to prohibiting flows consistent with EPA regulations. Through the proposed modifications to the MS4 Permit, it seems that the Agency may be establishing prohibitions on flows not contemplated by the federal regulations and diverging from the BMP-based approach to such previously allowable flows. Therefore, we requested above that the proposed terms be relocated to other sections of the Permit where it can be made clear that achievement of the WLAs can be done through BMPs including natural treatment systems.</p>	<p>days during which the standards applicable to the receiving waters may be exceeded. It assigns zero exceedance days for summer dry weather.</p> <p>402(p) section of the CWA refers to discharges of storm water from MS4s. MEP standard is applicable to <u>storm water</u> discharges. Point source non-storm water discharges are subject to WQBELs under the traditional NPDES permitting scheme consistent with EPA regulations.</p>		
24.9	<p>To the extent that the proposed Permit modifications move away from the Agency's prior approaches and from the federal Clean Water Act requirements, the Agency may be relying on its authority under the Porter-Cologne Water Quality Control Act. If this is true, then it would be essential for the Agency to analyze the costs and economic impacts of the MS4 Permit modifications. To our knowledge, the Agency has not yet undertaken such analyses.</p>	<p>See response to comment 1.5</p>		
24.10	<p>Because the proposed MS4 Permit modifications import the dry weather WLAs from the Santa Monica Bay TMDL into the MS4 Permit, it is important that the Agency is aware of certain potential problems with those WLAs. We believe that the Santa Monica Bay TMDL suffers from some of the same legal and scientific problems discussed in comments submitted for the Ballona Creek TMDL, including but not limited to concerns with the selection of target bacteria indicators, the concerns with accounting of "internal" bacteria loadings, concerns about the ability to</p>	<p>The action in this proceeding is to incorporate relevant provisions of the TMDL into the permit. The TMDL itself is not before the Regional Board at this time.</p>		

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	effectively implement the TMDL given the ubiquitous nature of the bacteria.			
24.11	<p>We respectfully request the RWQCB consider the following Implementation Principles in its proposed reopening of the Los Angeles MS4 Permit to incorporate dry weather waste load allocations (WLAs) from the Santa Monica Bay Beaches Bacteria TMDL:</p> <p><i>I. Implementation principle: Achievement of the dry weather WLAs from the Santa Monica Bay Beaches Bacteria TMDL will be accomplished through BMPs implemented under the MS4 permit and SUSMP program.</i></p> <p>Technical TMDLs including their WLAs are expressed numerically as required by law. However, these numeric allocations are not self-implementing effluent limits. With respect to urban runoff, progress is achieved through Best Management Practices (BMPs) required under the region's MS4 permit. The MS4 Permit requires a wide array of BMPs, many of which have the ability to reduce to varying degrees anthropogenic bacteria and pathogens. BMPs required of new development and significant redevelopment are addressed through Standard Urban Stormwater Management Plans (SUSMPs) - a program under the MS4 permit. The implementation plan for the Santa Monica Bay dry weather bacteria TMDL relies on BMPs for urban runoff, as appropriate, to make reasonable further progress towards attainment of bacteria and pathogen standards.</p> <p><i>II. Implementation Principle: Natural Treatment Systems are among the preferred BMPs for implementing the bacteria TMDL WLAs.</i></p>	<p>Point source non-storm water discharges are subject to QBEL and traditional NPDES permitting scheme. The Permittees may use any control or measure (including NTS) that will ensure compliance with WQS or WQOs of point source non storm water discharges.</p> <p>Iterative process is to be only used for controlling pollutants in storm water discharges.</p>		

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	<p>Natural Treatment Systems (NTS), such as constructed marshes, wet ponds, biofiltration systems, riparian corridors, and bioswales, are considered to be highly desirable BMPs, because they serve multiple purposes-removing multiple pollutants while providing for capture and reuse of stormwater and permissible dry weather runoff. Such capture and reuse opportunities include use as wildlife habitat, open space, greenways, non-contact recreation areas, environmental education locations, runoff reduction, and/or flood control. NTS BMPs are known to reduce multiple pollutants found in urban runoff including metals, nutrients and organic compounds, in addition to bacteria and pathogens, and may contribute significantly to the implementation of other TMDLs in the region. The Freshwater Marsh and Riparian Corridor system implemented to capture, reuse, and treat runoff from the Playa Vista development is a model NTS BMP in the Ballona Creek watershed that achieves the benefits discussed above.</p> <p><i>III. Implementation Principle: NTS BMPs are consistent with an Integrated Water Resources Approach.</i></p> <p>NTS BMPs appropriately selected and sized in accordance with SUSMP criteria can provide the backbone structural BMPs for an Integrated Water Resources Approach (IRW A). Such an integrated approach is dependent on a holistic view of water resource management that incorporates elements such as wet and dry weather flow control, water reuse, and pollutant removal--each of which are components of NTS BMPs.</p> <p><i>IV. Implementation Principle: Use of NTS BMPs in conjunction with other BMPs provides reasonable assurances of compliance with water quality standards.</i></p>			

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	<p>NTS BMPs in combination with source controls, project design features, and non-structural BMPs provide reasonable assurances that water quality standards for bacteria and pathogens will be attained. Based on available knowledge of BMP effectiveness, and input on actual practices from the MS4 permittees, the RWQCB reasonably can determine that such approaches will meet the requirements of the Santa Monica Bay dry weather bacteria TMDL when deployed on a subregional or project-level basis.</p>			
25.1	<p>The Regional Board's Proposal Is Required By Law Federal law clearly commands that the Regional Board integrate the Bacteria TMDL into the effluent limitations of appropriate NPDES permits. Specifically, Federal regulations require that: Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. (40 CFR § 122.44 (d)(4)(vii)(B).)</p> <p>In fact, the Regional Board has, in other ongoing proceedings, stated that the Environmental Protection Agency has underscored that "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs." Correspondence from Executive Officer Jonathan Bishop to Elizabeth Miller Jennings (June 15,2006) (citing "Establishing Total Maximum Daily Loads (TMDL) Waste load Allocations (WLAs) for Storm Water Sources and NDPEs Permit Requirements Based on Those WLAs," USEP A, 2002.) Federal law leaves no room for the</p>	<p>Staff agrees that TMDLs must be incorporated into the appropriate NPDES permits, which must be consistent with the TMDL's assumptions and requirements.</p>		

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	<p>Regional Board to <i>not</i> assure that the Los Angeles County MS4 Permit contains limitations consistent with already established WLAs, and the underlying Santa Monica Bay bacteria TMDL. Thus, the effluent limits set by the L.A. MS4 permit must be consistent with the Bacteria TMDL's waste load allocations. Failure to perform a nondiscretionary duty imposed by the Clean Water Act is grounds for a citizen suit, as well as withdrawal of EP A approval of California's administration of the NPDES permitting program. (33 U.S.C. §1365(a) (2); 40 C.F.R. § 123.25.) The Los Angeles Regional Board should also take notice that as far back as four years ago the Santa Ana Regional Board integrated TMDL limits into the Orange County MS4 permit. (See Order No. R8-2002-0010 (NPDES No. CAS618030), Storm Water Permit for the County of Orange, OCFCD, and Incorporated Cities, pp. 35-37.) Hence, there is nothing new or unique about the proposal before you now.</p> <p>Integration of the Bacteria TMDL at this time makes all the more sense because California's health laws make high levels of bacteria at public beaches unlawful. (See Health and Safety Code §115880 [Assembly Bill 411, Statutes of 1997, Chapter 765]; 17 Cal. Code. Regs. §§7956 to 7961.) The attached Beach Report Card, published by Heal the Bay, documents the historic exceedances of these standards. Moreover, the L.A. MS4 Permit already prohibits discharges that cause or contribute to a condition of nuisance; exceedance of the state's health standards could very well qualify as nuisance in the context of the Permit.</p> <p>Beyond legal requirements, integration of the Bacteria TMDL at the height of this beach season-during which millions will visit Santa Monica Bay-would be a strong</p>			

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	<p>statement that the Regional Board is living up to its fundamental obligation to the citizens. A recent study estimated that an annual excess of 627,800 to 1,479,200 cases of gastrointestinal illness occur as a result of swimming at Los Angeles and Orange County beaches contaminated with <i>enterococci</i> bacteria. Using a conservative health cost of gastroenteritis, this corresponds to an annual economic loss of \$21 million or \$50 million (in year 2000 dollars) depending upon the underlying epidemiological model used. (Given, S. and Pendleton, L. from the UCLA Department of Environmental Health Sciences, and Boehm, A. from the Stanford University Department of Civil and Environmental Engineering, Environmental Science and Technology - <i>in press.</i>)</p> <p>Moreover, all stakeholders in the Los Angeles Basin have been on notice since 2001 that the staff report/ fact sheet of the current L.A. MS4 permit anticipated the incorporation of TMDLs:</p> <p>TMDLs are one of the Regional Board's highest priorities. In view of the Region's highly urbanized environment, it is likely that pollutants in storm water will be allocated significant load reductions. While specific load reductions can't be forecast at this time, the Board does envision that storm water permits will be an important mechanism for implementing pollutant load reductions. (p. 14.)</p> <p>Thus, there is no principled nor legal justification for diverting from this course.</p>			
25.2	<p>Proposed Language Changes In furtherance of clarity and efficiency, the following</p>	<p>Section 13262(a) of the Cal. Water Code is not relevant to this proceeding. A Fact Sheet will be created that will include appropriate analogous findings.</p>		

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	<p>language changes are offered for your consideration. These proposed changes are set out below in redline format: NEW FINDING New Finding is proposed to be Number 28 under E. Federal, State, and Regional Regulations on page 12 of the LA MS4 Permit and shall read:</p> <p>"28. The Regional Board adopted the Santa Monica Bay Beaches Bacteria TMDL (Dry Weather Only) on January 24, 2002. The TMDL was subsequently approved by the SWRCB, the Office of Administrative Law (OAL), and the United States Environmental Protection Agency (USEPA) and became effective on July 15, 2003. 40 CFR section 122.44(d)(4)(vii)(B) requires that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation. The Waste Load Allocations in the TMDL are expressed as the number of allowable days that may exceed the Basin Plan water quality objectives for protection of Water Contact Recreation (REC-1) in marine waters. This amendment to Order 01-182 is undertaken pursuant to 40 CFR sections 122.41(f) and 122.62, Part 6.1.1 of Order 01-182, CWC 13262(a), and a stipulation entered into by the Regional Water Quality Control Board, Los Angeles Region (Respondent), Natural Resources Defense Council et al. (Intervenors) and the Petitioners Arcadia et al., in the Superior Court of the State of California, County of Los Angeles - Central Civil West (Lead Case Number BS 080548) executed October 24, 2004."</p>			

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25.3	<p>Proposed is new language in a new paragraph to be placed behind the current untitled final paragraph in "Part 1. DISCHARGE PROHIBITIONS".</p> <p>The proposed new language and new title is: <u>"Part 1. B. Chapter 7-4 of the Basin Plan, entitled "Santa Monica bay Beaches Bacteria TMDL," is hereby incorporated by reference into this permit. Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in Chapter 7-4 is prohibited. For the purposes of this paragraph, responsibility for such prohibited discharges is determined as indicated in Table 7-4.1 of the Basin Plan and Appendix G of the staff report that accompanied the Basin Plan amendment, which provide that co-permittees are jointly responsible for compliance with the limitations imposed therein.</u></p>	<p>The proposed language has been revised to reference the specific tables in the Basin Plan that contain the regulatory provisions of the TMDL. The proposed language has also been revised to clarify to whom the responsibility for prohibited discharges in Part 1. B. applies.</p>	Yes	Permit language, Parts 1. B. and 2.5
25.4	<p>Proposed is new language in a new paragraph to be placed behind the current Part 2. RECEIVING WATER LIMITATIONS. The new final paragraph will be titled: "Part 2, Section 5" on page 18 of the LA MS4 Permit and the language shall read:</p> <p>"5. Discharge of bacteria into the Santa Monica Bay that exceeds the waste load allocations <u>and other applicable conditions</u> specified in <u>chapter 7-4 of the Basin Plan</u> during summer dry weather (April 1 to October 31) and winter dry weather (November 1 to March 31) is prohibited as specified in Part 1.B, Discharge Prohibitions, above. The Waste Load Allocations for Permittees are listed in Attachment V (Table 7-4.2a to Attachment A to Resolution No. 02-004).</p> <p>a. During summer dry weather (April 1 to October 31),);</p> <p>(i) discharges into the Santa Monica Bay shall not result in any exceedances of the single sample</p>	<p>The proposed language in Part 2. has been revised to remove the winter dry weather requirements. Part 2 has also been revised to reflect the commenter's proposed language, which clarifies that permittees shall not cause or contribute to any exceedances of the single sample or geometric mean bacteria objectives in the wave wash of Santa Monica Bay during summer dry weather.</p>	Yes	Permit language, Part 2.5

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	<p>bacteria objectives; and</p> <p>(ii) <u>Permittees shall not cause or contribute to any exceedances of the single sample bacteria objectives;</u></p> <p>b. During winter dry weather (November 1 to March 31):</p> <p>(i) discharges into the Santa Monica Bay shall not cause exceedances of the lesser of:</p> <p style="padding-left: 40px;">1) Exceedance days at the designated reference site; or</p> <p style="padding-left: 40px;">2) Exceedance days based on historical bacteriological data at the monitoring site.</p> <p>(ii) Permittees shall not cause or contribute to exceedances of the lesser of:</p> <p>1) <u>Exceedance days at the designated reference site; or</u></p> <p>2) <u>Exceedance days based on historical bacteriological data at the monitoring site.</u></p> <p>c. Discharges into the Santa Monica Bay shall not result in any exceedances of the geometric mean bacteria objectives during summer or winter dry weather. <u>Permittees shall not cause or contribute to exceedances of the geometric mean bacteria objectives during summer or winter dry weather.</u></p>			
26.1	<p>The waste load allocation is defined in the TMDL by allowable exceedance days, with compliance to be "determined by daily or weekly sampling in the wave wash at all major drains and creeks or at existing monitoring stations at beaches without storm drains for freshwater outlets." This allocation scheme is in contrast to your transmittal letter, which states that the proposed language includes "a dry weather prohibition of flows containing bacteria to the Santa Monica Bay".</p>	<p>The proposed language has been revised to clarify that the prohibition on discharges applies at the wave wash of Santa Monica Bay, the point at which the storm drain or creek empties and the effluent from the storm drain initially mixes with the receiving ocean water.</p>	Yes	Permit language, Parts 1. B. and 2.5

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26.2	The proposed language at Part 1.B. of the <i>Discharge Prohibitions</i> section of the permit states that "Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited." This prohibition erroneously applies marine receiving water standards to all MS4 discharge points under the municipal stormwater permit.	See response to comment 26.1		
26.3	The TMDL anticipated "a multi-part numeric target based on the bacteria objectives for marine waters designated for contact recreation", and that "the numeric targets will be the same as the recently adopted Basin Plan objectives, as measured at point zero (also referred to as the "mixing zone" or "wave wash")". The proposed language for the stormwater permit, on the other hand, states that "Discharge of bacteria into the Santa Monica Bay that exceeds the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL during summer dry weather (April 1 to October 31) and winter dry weather (November 1 to March 31) is prohibited as specified in Part 1.B, Discharge Prohibitions, above." This statement erroneously applies a compliance point for the TMDL at the discharge, instead of "point zero".	See response to comment 26.1		
26.4	Section 8.3 of the TMDL (<i>Implementation Approach</i>) states that "Flexibility will be allowed in determining how to reduce	Staff agree that waste transport or assimilation are not appropriate designated uses for waterbodies. The Water		

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	<p>bacteria densities as long as the required allocations are achieved in the wave wash or at ankle depth"; however, dry weather diversions appear to be the preferred method by which compliance will be achieved. The draft San Diego municipal stormwater permit contains the language "Urban runoff treatment and/ or mitigation must occur prior to the discharge of urban runoff into a receiving water. Federal regulations at 40 CFR 131.10 (a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an urban runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. This is consistent with USEP A guidance to avoid locating structural controls in natural wetlands." There appears to be a conflict between the federal regulations and compliance methodologies proposed by the TMDL.</p>	<p>Boards are prohibited by Water Code section 13360 from specifying the manner of compliance with permit conditions. If an in-stream treatment facility was proposed as a means of compliance, concerns about it can be addressed at that time.</p>		
27.1	<p>Recently, the Board adopted Total Maximum Daily Loads for bacterial indicator densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel (Ballona Creek TMDLs). During the hearing On the Ballona Creek TMDLs and in its supporting documents, the Board indicated its preference for utilizing an Integrated Water Resources Approach (IRW A) to address bacterial issues. However, the proposed modifications to the MS4 permit do not clearly embrace this preference. This is of concern to Playa Capital Company,</p>	<p>See responses to comments 24.1 and 24.4</p>		

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	<p>LLC (playa) and Playa respectfully requests the Board clarify natural treatment systems are desirable and consistent with an IR W A.</p>			
27.2	<p>As described in Playa's comments submitted during the Ballona Creek TMDL proceedings, the Freshwater Marsh at Playa Vista is one of the many success stories of the Playa Vista development project. The Freshwater Marsh plays a critical role in reducing the pollutant loading of urban run-off, provides ecologically sound flood control facilities, and provides important habitat for a wide variety of birds, manuals, and other species. Playa is concerned that without the requested clarification, the proposed modifications to the MS4 permit discourage the implementation of natural treatment systems such as the Freshwater Marsh.</p>	<p>The language has been revised to clarify that the prohibition on discharges of summer dry weather flows from MS4s into Santa Monica Bay that cause or contribute to violations of the bacteria Receiving Water Limitations in Part 2.5 is applicable to the wave wash of Santa Monica Bay – not to every discharge to the MS4 system. See response to comment 1.3.</p>		
27.3	<p>In addition, Playa is concerned that as currently proposed, the MS4 permit modifications effectively prohibit dry weather outflows from natural treatment systems such as the Freshwater Marsh. Clearly such a prohibition would preclude future creation and development of natural treatment systems, a situation which is contrary to the Board's stated goals and objectives.</p>	<p>See response to comment 27.2. Since the Freshwater Marsh does not discharge directly to the wave wash of Santa Monica Bay, the proposed prohibition does not apply to the Freshwater Marsh.</p>		
27.4	<p>In order to remove an ambiguity from the proposed modifications to the MS4 permit, Playa respectfully requests the Board: (1) clarify natural treatment systems are desirable and consistent with an IRWA, and (2) clarify that dry weather outflows from such natural treatment systems will not be prohibited.</p> <p>Finally, Playa has had the opportunity to review the</p>	<p>See responses to comments 24.1 through 24.11 and 27.3</p>		

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	comment letter prepared by Paul N. Singarella and Shanda M. Beltran of Latham & Watkins, LLC. Playa fully supports and concurs with that comment letter, and, by reference incorporates those comments and supporting documents herein.			
28.1	<p>The Cities object to the manner in which the reopening of the 2001 NPDES Permit has been proposed and noticed. Permit issuance and modifications are quasi-judicial, not quasi-legislative, rule-making proceedings. <i>City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region</i> (2006) 135 Cal. App. 4th 1377, 1385; <i>See also City of Santee v. Superior Court</i> (1991) 228 Cal. App. 3d 713, 718. Consequently, the Regional Board is required to comply with due process mandates. <i>Somerfield v. Helmick</i> (1997) 57 Cal. App. 4th 315,320 ["The exercise of a quasi-judicial power requires an impartial decision maker and must satisfy at least minimal requirements of procedural due process."].</p> <p>Pursuant to Government Code section 11425.10(a)(2), the Regional Board must provide adequate notice that it is conducting an adjudicative, rather than a quasilegislativ rulemaking or informational proceeding. The Reopener Notice does not indicate the manner in which the Regional Board will consider this matter. If the hearing is going to be conducted as an adjudicatory hearing, then the Regional Board is required to clearly state as much. Gov't Code § 11445.30. Given that such notice has not been provided, and given that quasi-legislative actions are scheduled to be considered on the day of the reopening hearing, the Cities are forced to conclude that the Regional Board is attempting to conduct the reopening hearing in a quasilegislativ manner. This is contrary to California law. <i>See City of Rancho Cucamonga</i>, 135 Cal. App. 4th at 1385.</p>	<p>The agenda plainly sets forth that the hearing will be conducted pursuant to State Board hearing regulations set forth at 23 CCR 647 et seq.</p> <p>Staff agrees that permit modifications are quasi-adjudicative, not quasi-legislative. 23 CCR §648(a) (Article 2) defines adjudicative proceeding as an "evidentiary hearing for determination of facts pursuant to which ... a Regional Board formulates and issues a decision." 23 CCR §649 (Article 3) describes rulemaking, or quasi-legislative proceedings, and that section does not include the issuance of permits.</p> <p>The procedures to be used will adequately afford all parties and interested persons due process of law. The notice of hearing on this matter was adequate, and contemplated staff's understanding of the level of controversy that was to be expected, considering the support of many of the commenters here had expressed in favor of the TMDL, when it was adopted. Nevertheless, one or more commenters have requested the hearing be conducted with a more formal adjudicatory process. While noting that Government Code §§ 11500 et seq. do not apply to the Regional Board, those commenters will be provided with such additional process as the Regional Board determines is warranted at the time of the hearing.</p> <p>Since Regional Board staff did not designate the hearing as an "informal hearing", the requirements of Government Code § 11445.30 are not applicable.</p>		

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		In response to comments requesting more time and opportunity to present options to staff, a workshop was scheduled and held on July 21, 2006.		
28.2	<p>Even if the Regional Board had provided adequate notice that it was conducting an informal adjudicatory hearing consistent with California law, the Cities believe this matter instead merits a full formal adjudicatory hearing. According to Government Code section 11445.20, informal hearings are appropriate only in simple cases such as:</p> <p>a) A proceeding where there is no disputed issue of material fact.</p> <p>(b) A proceeding where there is a disputed issue of material fact, if the matter is limited to any of the following:</p> <p>(1) A monetary amount of not more than one thousand dollars (\$1,000).</p> <p>(2) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days.</p> <p>(3) A disciplinary sanction against an employee that does not involve discharge from employment, demotion, or suspension for more than 5 days.</p> <p>(4) A disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five days. Nothing in this section precludes an agency from imposing a stayed revocation or a stayed suspension of a license in an informal hearing."</p>	Comment noted. See response to comment 28.1		

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28.3	The Cities believe that the appropriate way to enforce TMDLs is through a Memorandum of Understanding ("MOU"), not through incorporation into the NPDES Permit. Such MOUs should provide that good faith compliance and implementation of the BMPs set forth in the developed Implementation Plan constitutes compliance with the adopted TMDLs.	40 CFR section 122.44(d) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. Failing to incorporate the waste load allocation into the permit in favor of an MOU would be contrary to the federal regulations. See response to comment 1.5.		
28.4	Rather than numerical limits, the Cities believe that BMPs must be in accordance with the Maximum Extent Practicable ("MEP") and reasonableness standards set forth under federal and state law. Water Code §§ 13000, 13241, 13263. When adopting and implementing TMDLs, the Regional Board must fully comply with all relevant portions of CEQA and perform a reasoned and thorough analysis of all impacts. Effluent limitations in all TMDLs must be based on adequate, peer reviewed, science.	See response to comments 1.5, 1.6, and 3.2.		
28.5	According to the Administrative Procedure Act ("APA"), the Regional Board should convert an adjudicatory process into a formal hearing whenever issues of material facts are in dispute, essential facts must be obtained to permit an adequate presentation of the matter, or cross-examination is necessary for proper determination. Gov't Code §§ 11545.50(a), 11545.60(a), 11545.60(b). As detailed above, all of these issues are present. The Cities therefore exercise their rights, pursuant to Government Code section 11445.30, and object to the use of an informal hearing procedure in this matter. Instead, the Cities request that any	Comment noted. See response to comment 28.1. Government Code §§ 11500 et seq. do not apply to the State or Regional Water Boards.		

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	public hearing on the reopening be done in accordance with the regulations governing a formal adjudicatory hearing.			
28.6	<p><u>California Law Provides the Cities the Right to Present Evidence and Cross-Examine Witnesses</u></p> <p>One of the fundamental rights granted to the Cities in an administrative adjudication is the right to present or rebut evidence. Gov't Code § 11425.10(a)(1); Cal. Code Regs, tit. 23, § 648.5. This includes the right to cross-examine witnesses. Government Code § 11513. Pursuant to Government Code section 11513(b), the Cities request the opportunity to present evidence and call and examine witnesses during the reopening hearing. The Cities' witnesses would include Regional Board staff involved in the preparation of the reopening and the Santa Monica Bay TMDLs. The Cities also wish to elicit testimony from their staff and from environmental experts in the field of stormwater. The Cities further request the opportunity to introduce exhibits and to cross-examine opposing witnesses on any matter relevant to the issues on the reopening. Government Code § 11513.</p>	See response to comments 11.20, 28.1, and 28.5. The Cities will be authorized to present relevant evidence, and the right to call and cross examine witnesses during the hearing, subject to rules governing administrative hearings, and the appropriate discretion of the Board during the hearing.		
28.7	<p><u>The Regional Board Must Clearly Disclose and Provide Full Access to the Administrative Record</u></p> <p>The Regional Board must provide a factual basis for its decision supported by evidence offered and admitted on the record at the hearing or on matters officially noticed at the hearing. Gov't Code § 11425.5; Cal. Code Regs., tit. 23, §§ 648.2, 648.3. Any decision by the Regional Board must be "based exclusively on evidence of record in the proceeding</p>	See response to comment 11.20.		

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	and on matters officially noticed in the proceeding." Gov't Code § 11425.50(c); <i>See also</i> Gov't Code § 11410.10, Cal. Law Revision Com.			
28.8	The Cities have not yet been provided access to, or even a list of, the documents comprising the contents of the Administrative Record on this matter. The failure to provide the Cities with access to the Administrative Record in advance of the public hearing substantially impairs their preparation for the hearing and results in a violation of the due process. In order to properly prepare for the forthcoming hearing, the Cities must have access to the documents comprising the Administrative Record and be given sufficient time to prepare their witnesses' testimony. Since the Cities have not been given sufficient notice or time to prepare for this hearing, the reopening must be postponed.	The Cities have not neither been denied access, nor contacted staff to make arrangements to view the records. In any event, see response to comment 11.20.		
28.9	<p><u>The Reopening is Inappropriate Considering the State Numeric Limits Panel Pending Decision</u></p> <p>The State Water Board has convened a panel of experts with noted academic and regulatory qualifications to determine whether it is technically feasible to develop numeric limits or other quantifiable measures for inclusion in storm water permits. The State Board Panel has held public meetings and is in the process of drafting an opinion on this matter. Since the State Board Panel's decision directly relates to whether or not the incorporation of the numeric limits contained in the Santa Monica Bay Beaches Bacteria TMDL is feasible, it is inappropriate for the Regional Board</p>	See response to comment 1.2		

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	to act at this time. Instead, the Regional Board should delay any action until such time as the State Board Panel issues findings and recommendations.			
28.10	<p><u>The Reopener is Technically Flawed</u> The proposed re-opener effectively proposes the establishment of a numeric limit on the discharge of a pollutant. This is contrary to USEP A policy as it relates to municipal NPDES permits. The USEP A has stated that municipal NPDES permits are to address pollutants - including those subject, to TMDLs through the use of BMPs to be implemented on an iterative basis ("trial and error"). See EP A Memorandum, Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (November 22,2002). Although the limitation is couched as a discharge prohibition and also, inexplicably, as a receiving water limitation, it still qualifies as a numeric limit because it includes a "waste load allocation."</p>	See response to comment 1.2		
28.11	<p>The proposed new language for Part I.B, which addresses non-storm water discharge prohibitions of the current Los Angeles County MS4, is written in a manner that could apply the dry-weather bacteria WLA for Santa Monica Beaches to all Los Angeles County MS4 Permittees. The proposed section of Part I.B states: Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited."</p>	See response to comment 1.3		

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	On its face, one could conclude that this requirement applies to non-storm water discharges from all Permittees, rather than merely to those subject to the Santa Monica Beaches Bacterial TMDL.			
28.12	Furthermore, based on the proposed language, any discharge located anywhere in the MS4 system with elevated bacteria levels could be considered a violation of the MS4 municipal stormwater permit, even if it does not result in an exceedance of TMDL limitations.	See response to comment 1.3		
28.13	The addition of paragraph 5 to Part 2., "Receiving Water Limitations," contradicts the purpose and intent of this section, which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan (SQMP) to attempt to resolve an exceedance. Paragraph 5 simply says that a waste load allocation must be met - period. Determining whether a non-storm water discharge is an illicit discharge based on its bacteria content will be difficult, if not impossible. Currently, the means for determining whether a discharge is illicit is via an examination based on visual appearance and odor.	See responses to comments 1.4 and 2.5		
28.14	The Cities believe that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore, is subject to economic and reasonableness analyses. Consistent with state and federal law, all obligation placed	See response to comment 1.5		

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	<p>on local governments that are deemed in excess of federal requirements constitute a state mandate and must be accompanied by a subvention of funds from the state.</p>			
28.15	<p>If the Regional Board is going to alter the 2001 NPDES Permit, it must strictly follow all applicable statutes and regulations under the APA. Because it has failed to provide adequate notice pursuant to the APA, the Regional Board should, at the very least, postpone consideration of the reopening until such time as it has fully complied with state law. Considering, however, that the 2001 NPDES Permit is due to expire at the end of this year, the Cities request that the Regional Board delay any discussion of incorporation of TMDLs into the NPDES Permit until such time as the new NPDES Permit is issued.</p> <p>The Cities are dedicated to working with the Regional Board in order to achieve our common goals of clean water. As public entities, the Cities and the Regional Board share the same duty of ensuring that these goals are accomplished in a rational, reasoned, and realistic manner. Consistent with their important charge of protecting the public interest, the Cities ask that the Regional Board take full consideration of the aforementioned concerns</p>	<p>The Regional Board has and will continue to follow the applicable procedures, including those set forth in the APA.</p> <p>Regional Board staff appreciate the Cities' willingness to work with the Regional Board to achieve clean water. See response to comment 11.23.</p>		
29.1	<p>New proposed Finding No. E.28, thus implies, incorrectly, that the Permit amendment is authorized by, among other things, a stipulation entered into with the <i>Arcadia, et al.</i> Petitioners, who include Signal Hill and many of the Cities in CPR. Said Stipulation, however, does not authorize the Permit amendment. Instead, the only relevant</p>	<p>The stipulation is relevant due to the recognition that TMDLs cannot be prospectively incorporated into NPDES permits. Nevertheless, the reference is confusing, and has been removed.</p>	Yes	Proposed Finding E.28

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	<p>portions of the Stipulation to the proposed Permit amendment provide as follows: Petitioners' Phase II Trial Brief framed Issue Eight as: <i>Part 3. C of the Permit violates federal and state law in that it allows the Executive Officer to modify the Permit without notice or public hearing.</i> The briefing for the Phase II trial on Issue Eight was joined by all Petitioners. As to Issue Eight, the Parties stipulate that Part 3.C of the Permit is interpreted to mean that revisions to the storm water quality management plan directed by the Executive Officer pursuant to Part 3.C are not elements of the Permit unless and until the Permit is modified to incorporate them pursuant to appropriate notice and hearing. The language of Finding E.28, as written, should thus be modified, as it incorrectly implies that the Permit amendment is authorized by the Stipulation, rather than state the fact that the procedure for the Permit amendment has been modified because of the Stipulation i.e., a hearing before the Regional Board is being conducted, as opposed to unilateral action by the Executive Officer. The Cities request that the finding be corrected to indicate that the Permit is being amended via a hearing before the Regional Board, rather than through action by the Executive Officer alone, as a result of the referenced Stipulation.</p>			
29.2	The Proposed Amendment Is Ambiguous, Because, As Written, It Imposes Illicit Discharge Prohibitions On Cities That Are Not Subject To The Santa Monica Bay Dry-Weather Bacteria TMDL.	See response to comment 1.3		

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	<p>Part 1 of the Permit presently contains the following prefatory language:</p> <p>The Permittees shall effectively prohibit non-stormwater discharges into the MS4 and watercourses, except for such discharges:</p> <p>Part 1 thus presently contains a general prohibition of certain non-stormwater discharges, i.e. it prohibits "illicit discharges" except for those enumerated in Part 1.1. The proposed Amendment substantively changes Part 1 by adding a new Part I.B, which reads as follows:</p> <p>Discharges summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry Weather TMDL is prohibited.</p> <p>This newly added Part I.B thus adds a provision to the Permit that applies to all permittees under the Permit, requiring each of them to prohibit the discharge of any summer dry weather or winter dry-weather flows that exceed the specific waste load allocations in the Santa Monica Bay Beaches Dry Weather TMDL. The language in Part I.B seems to apply regardless of whether or not those summer or winter dry weather flows are flows to the Santa Monica Bay. Thus, the proposed Amendment imposes a claimed "discharge" prohibition on all Permittees for all dry weather "flows,,2 regardless of whether or not such "flows"</p>			

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	<p>are into Santa Monica Bay.</p> <p>As the Santa Monica Bay Beaches Dry Weather TMDL, on its face only applies to dry weather discharges into Santa Monica Bay, the proposed Amendment is overly broad and arbitrary, and the Regional Board is without authority to apply it to all municipalities whether or not they are to be governed by such TMDL.</p>			
29.3	<p>The Proposed Amendment Improperly Modifies The "Discharge Prohibition" Section Of The Permit To Require The Prohibition Of Non-Point Source Urban Runoff, That Is, To Prohibit Unknown And Unidentified Sources Of Bacteria, Rather Than "Illicit Discharges" As Provided For In The Regulations.</p> <p>As referenced above, the proposed Permit Amendment adds a new section to Part 1 of the Permit to regulate the existence of bacteria in "flows" rather than regulating "illicit discharges." As presently written, Part 1 of the Permit requires the Permittees to "effectively" prohibit non-stormwater discharges into the MS4, consistent with the language under Clean Water Act ("CW A" or "Act") section 1342(p)(3)(B)(ii). New Part 1.B is a substantial departure from the existing language and from the language of the CW A and federal regulations.</p> <p>Instead of regulating "illicit discharges," new Part 1.B purports to require Permittees to eliminate the existence of bacteria anywhere in their jurisdiction, where such bacteria can be collected by urban <i>runoff</i> resulting in waste load allocations in excess of the TMDL limits. In effect, the proposed amendment turns the "Discharge Prohibition"</p>	<p>The TMDL and this permit modification are not directed to what may or may not pass into the MS4, but to what may not come out of the MS4.</p>		

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	<p>section of the Permit on its head, and transforms it from one that was designed to require the Permittees to effectively prohibit "illicit discharges," to one that requires the Permittees to control the amount of bacteria on City streets and sidewalks, and anywhere in the City's jurisdiction.</p> <p>Section 1342(p)(3)(B)(ii) of the Clean Water Act ("CW A") provides, in relevant part, as follows: Permits for discharges from municipal storm sewers (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers;</p> <p>The regulations to the CW A (consistent with language in the Act to effectively prohibit non-stormwater discharges), provides that municipal permittees are to have adequate legal authority to, among other things: "Prohibit through ordinance, order or similar means, <i>illicit discharges</i> to the municipal separate storm sewer." (40 CFR § 122.26(d)(2)(i)(B).)</p> <p>The term "illicit discharge" is defined in the regulations to mean: "any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES Permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities." (40 CFR § 122.26(b)(2).)</p>			
29.4	<p>Thus, given the clear intent of the CWA, as further reflected by the regulations, the "Discharge Prohibition" section of the subject Permit is to be a requirement for municipalities to "effectively prohibit non-storm water discharges into the MS4, i.e., to prohibit "illicit discharges," but not to eliminate the existence of any particular pollutant</p>	See response to comment 29.3.		

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	<p>from the environment.</p> <p>The proposed Permit language is thus flawed in that it improperly seeks to convert the "Discharge Prohibition" section of the Permit into a provision that requires the Permittees to eliminate the existence of bacteria in their jurisdictions so that it will not end up in "flows" in excess of the waste load allocations. As such, the Amendment is unauthorized, is inconsistent with, and is contrary to, the language in both the CW A and the underlying regulations.</p>			
29.5	<p>The Proposed Permit Amendment Is Contrary To Law As It Improperly Seeks To Impose Numeric Limits Upon The Cities In Excess Of The Regional Board's Authority And Contrary To Law.</p> <p>In addition to new Part 1.B, the proposed Amendment also includes a new Section 5 to Part 2 of the Permit ("Receiving Water Limitations"). This new Section 2.5 reiterates the discharge prohibition imposed by new Part 1.B, and further provides that summer dry-weather discharges "shall not result in any exceedences of the single sample bacteria objectives," and that winter dry-weather discharges shall not cause exceedences in excess of certain specified exceedance days. New Section 2.5 also provides that discharges into the Santa Monica Bay "shall not result in any exceedance of the geometric mean bacteria objective during summer or winter dry weather." In short, new Part 2.5 of the Permit, similar to new Part 1.B, imposes a numeric limit on the amount of bacteria that may exist in urban runoff.³</p> <p>The inclusion of numeric limits in a Municipal</p>	See response to comments 1.1, 1.5, 1.6, and 3.2.		

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	<p>NPDES Permit, without first complying with State and federal law, is unauthorized, is arbitrary and capricious, and is contrary to law.</p> <p>First, under the CW A, Congress provided that permits for discharges from MS4s are to include controls "to reduce the discharge of pollutants to the maximum extent practicable..."(33 USC § 1342(p)(3)(B)(iii).) Whether or not it is appropriate, under federal law, to impose numeric limits which exceed the maximum extent practicable ("MEP") standard, is an issue presently in litigation. Regardless, however, of how the litigation resolves the MEP issue, it is clear that federal law does not "mandate" that municipalities strictly comply with numeric water quality standards. In <i>Defenders of Wildlife v. Browner</i> ("Browner") (9th Cir. 1999) 191 F3d 1159, 1165, the Ninth Circuit held that although the CW A requires industrial dischargers to strictly comply with water quality standards, it does not require that municipalities strictly comply with such standards: "Congress expressly required industrial stormwater discharges to comply with the requirement of 33 U.S.C. section 1311 . . . Congress chose not to include a similar provision for municipal storm sewer discharges." (<i>Id.</i> at 1165.)</p> <p>In the California Supreme Court case of <i>City of Burbank v. State Water Resources Control Board</i>, ("<i>Burbank</i>") (2005) 35 Ca1.4th 613, the Court found, with respect to a permit issued by this same regional board, that if an NPDES permit imposes mandates that go beyond those required by federal law, State law (in that case the need to conduct an "economic" analysis) was to be</p>			

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	<p>complied with. (<i>Id.</i> at 627.) Accordingly, here, as federal law does not require that municipalities strictly comply with numeric water quality standards, the numeric standards set forth in the proposed Permit amendment are State-imposed standards that go beyond the requirements of federal law. As such, these dry-weather standards cannot lawfully be imposed unless and until all State law requirements have been complied with.</p> <p>Under the California Porter Cologne Act, the waters of the State are to be "regulated to obtain the highest water quality which is <i>reasonable</i>, considering all demands being made and to be made on those waters and the <i>total values involved</i>, beneficial and detrimental, <i>economic</i> and social, tangible and intangible."(Water Code § 13000.) Further, under Water Code section 13263, when a waste discharge requirement is imposed, as proposed with the subject Amendment, the Regional Board is to take into consideration "the water quality objectives reasonably required," as well as "the provisions of section 13241." (Water Code § 13263(a).)</p> <p>It is further clear that: "Section 13263 directs regional boards, when issuing waste water discharge permits, to take into account various factors including those set out in section 13241. Listed among the section 13241 factors is '(economic considerations.'" (<i>Burbank, supra</i>, 35 Ca1.4th 613, 625.) Section 13241, moreover, requires the establishment of water quality objectives to ensure "the reasonable protection of beneficial uses," while recognizing that "it may be possible for the quality of water to be changed to some degree without unreasonably affecting</p>			

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	<p>beneficial uses." Under section 13241: "(Factors to be considered by a regional board in establishing water quality objectives which shall include, but necessarily be limited to, all of the following:"</p> <p>(a) Past, present, and probable future beneficial uses of water.</p> <p>(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.</p> <p>(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.</p> <p>(d) Economic considerations.</p> <p>(e) The need for developing housing within the region.</p> <p>(f) The need to develop and use recycled water</p>			
29.6	<p>There is nothing in the administrative record for this Permit amendment, which indicates that any of the requirements of Water Code sections 13000, 13241 or 13263 have been complied with. As such, the adoption of the proposed Permit amendment for the inclusion of new Parts I.B and 2.5, without compliance with State and federal law, is action contrary to law and is an abuse of discretion, and the Regional Board is without authority to adopt such</p>	<p>See response to comments 1.1, 1.5, 1.6, and 3.2.</p>		

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	an Amendment.			
29.7	<p>In addition, incorporating waste load allocations wholesale into a municipal NPDES permit, and therefore requiring strict compliance with numeric limits in a TMDL, is contrary to both federal and State policy. In a November 22, 2002 Memorandum issued by US EP A entitled "Establishing Total Maximum Daily Load (TMDL) Waste load Allocations (WLA) for Storm Water Sources and NPDES Permit Requirements based on those WLAs," EPA determined that where a TMDL is developed for storm water discharges:</p> <p>Because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small constructive stormwater dischargers.</p>	See response to comments 1.1, 1.5, 1.6, and 3.2.		
29.8	<p>In addition, the inclusion of numeric limits within a municipal NPDES permits is contrary to State policy. First, the proposed Amendment completely ignores the State Water Resources Control Board's ("State Board's") Numeric Limits Panel, which is a panel convened of recognized experts by such Board to address whether or not it is feasible to develop numeric limits for storm water permits, including municipal storm water permits. In September of 2005, this Panel heard presentations and testimony from various regional board representatives, including the Los Angeles Regional Board, along with testimony from the regulated and the environmental communities, and is</p>	See response to comment 1.2.		

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	<p>expected to develop a written assessment of issues related to the feasibility of developing numeric limits for storm water permits in the very near future. As such, the Permit Amendment proposes to require strict compliance with numeric limits, preemptively, and without consideration of the Numeric Limits Panel Report, or any policies or directives by of the State Board based on such report. Accordingly, it is contrary to State policy.</p>			
29.9	<p>In addition, in Order No. 2001-15, the State Board made clear that it has, to date, <i>not</i> required municipalities to strictly comply with water quality standards "through numeric effluent limitations." In Order No. 2001-15, the State Board acknowledged that Order No. WQ 99-05 contains language similar to the language in the US EP A Permit addressed in the <i>Browner</i> case (discussed above), and that this language does <i>not</i> require strict compliance with water quality standards. Instead, the State Board recognized that under Order No. WQ 99-05: "Compliance is to be achieved over time, through an iterative approach requiring improved BMPs." (Order No. 99-05, p. 7.) The Board concluded that:</p> <p>While we continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvement of BMPs, is appropriate. We will generally not require "strict compliance" with water quality standards through numeric effluent limitations and we will continue to follow an iterative approach, which seeks compliance over time. The iterative approach is protective of water quality,</p>	See response to comment 1.1.		

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	<p>but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced throughout large and medium municipal storm sewer systems. (Order No. 2001-15, p. 8.)</p> <p>Adopting the proposed Permit Amendment would thus be action contrary to State and federal policy and applicable law, and it would constitute an abuse of discretion by the Regional Board.</p>			
29.10	<p>The Regional Board Has Not Complied With The California Environmental Quality Act ("CEQA") With The Proposed Permit Amendment.</p> <p>The California Environmental Quality Act ("CEQA" - Public Resources Code § 21000, et seq.) requires all levels of California government to identify and analyze the affects of projects on the environment, and to minimize potentially adverse affects through feasible mitigation measures or the selection of feasible alternatives. (<i>Sierra Club v. State BD. of Forestry</i> (1994) 7 Ca1.4th 1216, 1233.) CEQA contains a "substantive mandate" that public agencies refrain from approving projects with significant environmental affects if "there are feasible alternatives or mitigation measures available which would potentially lessen" or avoid those affects. (<i>Mountain Lion Foundation v. Fish & Game Com.</i> (1997) 16 Ca1.4th 104, 134.)</p> <p>Section 21159 of the Public Resources Code provides that</p>	<p>See response to comment 1.6. The only operative part of CEQA applicable to state agencies is Chapter 3, thus the exemption from chapter 3 in Water Code section 13389 is a complete exemption.</p>		

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	<p>the environmental analysis under CEQA is to "take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites." (PRC § 21159(c).) This section imposes such a requirement <i>before</i> any performance standard or treatment requirement is to be imposed. (<i>Id.</i>)</p> <p>The inclusion of the numeric bacteria limits in the NPDES Permit, would result in the adoption of new "performance standards," requiring compliance with Public Resources Code section 21159. The proposed Permit amendment, therefore, should not be adopted, unless and until all requirements of CEQA have been met.</p> <p>Further, Water Code section 13389 exempts the Regional Board only from complying with Chapter 3 of CEQA, and only where such action is "required" by the CW A. Thus, where, as here, the Regional Board is attempting to impose numeric limits which are not required by federal law, there is no exemption from any part of CEQA. (<i>See Water Code § 13370 and § 13372(a): "The provisions of this chapter apply only to actions required under the Federal Water Pollution Control Act, and acts amendatory thereof or supplementary thereto."</i>).</p> <p>As federal law does not require that municipalities strictly comply with numeric water quality standards, all aspects of the CEQA must be adhered to before the proposed Permit amendment can be adopted. Because compliance with the proposed amendment will likely result in the construction of</p>			

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	<p>treatment facilities to treat dry-weather runoff, these potentially significant adverse environmental impacts must be assessed and mitigated, and feasible alternatives must be considered.</p> <p>We ask that these comments be included as part of the Administrative Record on this matter, and that they be considered by the Regional Board in its review of the proposed amendment to the subject Municipal NPDES Permit.</p>			
30.1	The USEPA has stated that municipal NPDES permits are to address pollutants – including those subject to TMDLs through the use of BMPs to be implemented on an iterative basis (trial and error).	See response to comment 1.1		
30.2	The Regional Boards inclusion of a numeric limit in the LA MS4 Permit preempts the SWRCBs effort to establish a policy on numeric limits in MS4 Permits.	See response to comment 1.2		
30.3	The proposed MS4 Permit language changes does not expressly say that this discharge prohibition applies only to Santa Monica Bay Beaches.	See response to comment 1.3		
30.4	The addition of paragraph 5 to Part 2, “Receiving Water Limitations” contradicts the purpose and intent of this section which is to provide an iterative process for resolving continued exceedances of water quality standards. There is no opportunity for the municipal Permittee to either increase existing BMPs or add new ones in its Storm Water Quality Management Plan SQMP to attempt to resolve exceedance. Paragraph 5 simply says that a waste load allocation must be met – period.	See response to comment 1.4		

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30.5	Determining whether a non storm water discharge is an illicit discharge based on its bacteria content will be difficult if not impossible. Currently, the means for determining whether a discharge is an illicit one is based on visual appearance and odor.	See response to comment 2.5		
30.6	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit exceeds the federal standard and, therefore is subject to economic analysis.	See response to comment 1.5		
30.7	The City believes that the introduction of the Santa Monica Beaches Bacteria TMDL in the Los Angeles County MS4 Permit is contrary to CEQA because no "Environmental Impact Report" equivalent was performed.	See response to comment 1.6		