

**Response to Comments from the July 29, 2009 Public Workshop on the Incorporation of Provisions
Consistent with the Los Angeles River Watershed Trash TMDL into the Los Angeles County MS4 Permit**

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| 1. County of Los Angeles, Department of Public Works |
| 2. City of Arcadia |
| 3. City of Artesia |
| 4. City of Bellflower |
| 5. City of Bell Gardens |
| 6. City of Carson |
| 7. City of Claremont |
| 8. City of Commerce |
| 9. City of Downey |
| 10. City of Duarte |
| 11. City of Gardena |
| 12. City of Inglewood |
| 13. City of La Canada Flintridge |
| 14. City of Monrovia |
| 15. City of Pico Rivera |
| 16. City of Rosemead |
| 17. City of San Gabriel |
| 18. City of Signal Hill |
| 19. City of West Covina |
| 20. City of Vernon |
| 21. City of Whittier |
| 22. Los Angeles Stormwater Quality Partnership ¹ |
| 23. Heal the Bay |
| 24. Santa Monica Baykeeper |
| 25. Charles Abbott Associates, Inc. |

¹ Partner cities include Agoura Hills, Azusa, Beverly Hills, Calabasas, Hidden Hills, Monrovia, Norwalk, Rancho Palos Verdes, and Westlake Village.

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| 26. Richards, Watson, Gershon, Attorneys at Law ² |
| 27. Rutan, Attorney at Law ³ |

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| 1.1 | County of Los Angeles, Department of Public Works | 8/3/2009 | LA River TMDL provisions should not be incorporated into the LA MS4 Permit until it's reissued. | TMDLs are not self-executing. In order to implement and enforce the requirements of the TMDL, the wasteload allocations (WLAs) and load allocations (LAs) established in a TMDL and assigned to each point source and nonpoint source, respectively, must be incorporated into the appropriate regulatory mechanism for the specific dischargers. In this case, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the WLAs will be the Los Angeles County MS4 Permit (Basin Plan Table 7-2.1). Therefore, reopening the permit at this time is necessary given that compliance with the interim WLAs, established in the Los Angeles River Watershed Trash TMDL and assigned to the Los Angeles County MS4 Permittees within the Los Angeles River Watershed, was required beginning in 2008. |

² Representing the Cities of Monrovia, San Fernando, San Marino, and South El Monte.

³ Submitted on behalf of the Cities of Downey and Signal Hill and the ad hoc group, Coalition for Practical Regulation. CPR consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bell Gardens, Bellflower, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Vernon, Walnut, West Covina, and Whittier.

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| 1.2 | County of Los Angeles, Department of Public Works | 8/3/2009 | LA River TMDL should be incorporated through reference to BMPs specifically compliance through installation of the full-capture system. | <p>The Los Angeles River Watershed Trash TMDL and the proposed permit provisions allow Permittees the option of demonstrating compliance with the interim and final WLAs established in the TMDL and the associated, proposed effluent limitations derived from these WLAs through the installation and ongoing maintenance of certain types of BMPs, i.e. certified full capture systems. See Finding 49 and proposed permit provisions in Part 7.1.B (1) (a), subparagraphs (2) and (3).</p> <p>However, certified full capture systems are not the sole means by which compliance with the wasteload allocations and the associated, proposed effluent limitations may be achieved. The TMDL and proposed permit provisions allow Permittees the option of applying partial capture devices and institutional controls to attain compliance. The nature of these applications is entirely at the discretion of the Permittees as long as they can satisfactorily demonstrate compliance with the effluent limitations as outlined in Part 7.1.B (1) (b), and (c).</p> <p>Should the proposed permit provisions incorporate the WLAs established in the TMDL only through reference to certified full capture systems, Permittees would be denied the option of applying other measures to achieve compliance with the TMDL WLAs and the associated, proposed effluent limitations.</p> |

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| 2.1 | City of Arcadia | 7/22/2009 | The Regional Board should use a more collaborative approach with cities to implement TMDL provisions instead of inserting the TMDL and its numerical limit into the LA MS4 Permit. | Federal regulations require that NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation (40 CFR 122.44(d)). Additionally, NPDES permits must contain provisions consistent with the State Water Quality Management Plan (Cal. Wat. Code § 13263). TMDLs are adopted by the Regional Board as amendments to the Regional Water Quality Control Plan (Basin Plan), which is a part of the State Water Quality Management Plan. Therefore, according to both federal and state law, the Regional Board is obligated to incorporate the provisions and requirements of the TMDL into the permit. |
| 2.2 | City of Arcadia | 7/22/2009 | The Regional Board should consider the cost associated with the LA River Trash TMDL. | The Regional Board considered the cost of implementing the LA River Trash TMDL during the development of the TMDL to the extent required by state law, in accordance with provisions of CEQA. See LA River Trash TMDL Staff Report (pp. 36-42) and Board Resolution R07-012. Furthermore, the Court of Appeal ruled that the Water Boards sufficiently complied with the economic considerations per Cal. Wat. Code § 13241. The TMDL discusses costs of collecting and disposing of trash, costs of various types of compliance measures, and a cost comparison of capital and operating and maintenance costs. |
| 3.1 | City of Artesia | 7/21/2009 | Nothing in 40 CFR Section 122.44(d)(4)(vii)B requires the incorporation of waste load allocations as effluent limits in any municipal NPDES Permit. | 40 CFR 122.44(d) requires that NPDES permits must be consistent with the assumptions and requirements |

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| | | | | <p>of any available wasteload allocation. The proposed permit provisions provide for alternative means of demonstrating compliance with the effluent limitations that are derived from the WLAs, including: (1) a BMP-based approach whereby BMPs meeting the performance standard of “full capture” may be properly installed and maintained on an ongoing basis to demonstrate compliance with the WLAs and (2) a numeric effluent limitation based approach whereby “partial capture” BMPs and institutional controls not meeting the performance standard of “full capture” may be implemented, in which case compliance with the effluent limitations is demonstrated by measuring actual reductions in trash discharges in a drainage area. This approach is also consistent with State Board Orders, including Order WQ 2009-008, in which the State Board concluded that the Regional Boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of either numeric or non-numeric effluent limitations.</p> |
| 3.2 | City of Artesia | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | <p>The regulation on which the proposed permit provisions are based – the Los Angeles River Watershed Trash TMDL – underwent an extensive public process during its initial adoption in 2001, and its re-adoption in 2007. During TMDL adoption, the Regional Board considered a variety of alternatives and found that the TMDL as adopted is reasonable. See Regional</p> |

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| | | | | Board Resolution R07-012. Furthermore, as evidenced by their approvals, the State Board and US EPA found the TMDL as adopted to be reasonable as have the courts. The TMDL is not at issue in the proposed re-opening of the permit. |
| 3.3 | City of Artesia | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 3.4 | City of Artesia | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | 40 CFR 122.44(d) requires that NPDES permits must be consistent with the assumptions and requirements of any available wasteload allocation. Failing to incorporate the WLAs into the permit in favor of memoranda of agreements would be contrary to the federal regulations. See also Response to 2.1 |
| 4.1 | City of Bellflower | 7/22/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 2.1. First, the iterative process was not intended to be a process in which there was no timeframe for achieving water quality standards. The permit requires timely progress toward achieving the Receiving Water Limitations identified in Part 2.1 (i.e. water quality standards). ⁴ The Trash TMDL's 8-year implementation schedule requiring progressive (i.e. iterative) reductions towards the final WLAs is consistent with the iterative approach to implement timely controls to achieve water quality standards. Nineteen years have passed since |

⁴ "The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges." (Order 01-182 as amended, p. 23).

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| | | | | <p>adoption of the first MS4 permit for Los Angeles County, while eight years have passed since adoption of the current MS4 permit. There has been ample time for Permittees to implement the provisions of the permit to control trash discharges to the Los Angeles River system and to apply the iterative approach set forth in the Part I.B. of the 2001 Permit in order to address the trash impairments in the Los Angeles River Watershed. Yet, water quality impairments due to trash discharges from the MS4 to the Los Angeles River and its tributaries remain a serious public health and environmental problem.</p> <p>Second, over the last 19 years, much has been learned about the nature of urban runoff and stormwater and BMP performance, both nationally and regionally. During the early years of the stormwater regulatory program, the State Board recognized that a prudent approach was one that implemented BMPs to reduce sources and control pollutants from the MS4 and continued to collect monitoring data on the characteristics of urban runoff and stormwater (Order WQ 91-03). However, with extensive data on the characteristics of stormwater and BMP performance, numeric effluent limitations for discharges of trash have</p> |

⁵ For example, installation of certified full capture BMPs in forty percent of a responsible jurisdiction’s drainage area translates to a forty-percent reduction in the pre-assigned baseline waste load allocations. Since the wasteload allocations are assigned as percent reductions, they can be directly translated from BMP implementation.

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| | | | | <p>become feasible since it is possible to determine a BMP equivalent of the numeric target.⁵</p> <p>Additionally, the Trash TMDL addresses the uncertainty associated with annual variability in trash discharge amounts through the use of three-year rolling averages of the assigned wasteload allocations, to determine compliance points (effluent limitations).</p> <p>As a result of these considerations and according to federal and state law, Regional Board staff concludes that it is necessary and feasible to include the interim and final WLAs contained in the Los Angeles River Watershed Trash TMDL into the permit as numeric effluent limitations to ensure timely and measurable reductions in trash discharges to eliminate the existing water quality impairment. This is consistent with the recent State Board Order that concluded that, “whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based on the regional water quality control board’s findings supporting either the numeric or non-numeric effluent limitations contained in the permit” (Order WQ 2009-0008).</p> |
| 4.2 | City of Bellflower | 7/22/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 4.3 | City of Bellflower | 7/22/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 4.4 | City of Bellflower | 7/22/2009 | TMDLs should be implemented through memoranda of | See Response to 3.5 |

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| | | | agreements. | |
| 5.1 | City of Bell Gardens | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 5.2 | City of Bell Gardens | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 5.3 | City of Bell Gardens | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 5.4 | City of Bell Gardens | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 6.1 | City of Carson | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 6.2 | City of Carson | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 6.3 | City of Carson | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 6.4 | City of Carson | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 7.1 | City of Claremont | 7/24/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of Claremont's understanding is the State is obligated to reissue permits on a 5 year cycle. | <p>While the expiration date of the permit was December 12, 2006, per federal and state regulation, the "terms and conditions" of the permit are administratively extended. Those terms and conditions include the reopeners identified in Part 6.I.</p> <p>The provisions of federal and state regulation recognize and provide for the fact that the permitting authority may not be able to reissue permits immediately upon expiration (23 Cal. Code Reg. 2235.4 and 40 CFR 122.41(f) and 122.62). That is the case with the Los Angeles County MS4 permit.</p> |

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| | | | | <p>The Los Angeles River Watershed Trash TMDL is a regulation adopted by the Regional Board, and compliance with certain provisions of the TMDL, including WLAs, is required prior to the time that the LA County MS4 permit can be reissued. The only way to ensure compliance is to incorporate the relevant provisions into the MS4 permit. Moreover, federal regulations require that NPDES permits incorporate provisions consistent with the assumptions and requirements of available wasteload allocations. While reissuing the permit would be preferable, it cannot be accomplished in time to ensure compliance with interim WLAs established in the TMDL. Accordingly, reopening the permit is the only option that would timely implement federal regulations, and the Regional Board's regulations (the TMDLs).</p> <p>To fulfill the purposes of the Clean Water Act, the regulations authorize an agency to modify a permit at an interim time if certain circumstances, applicable here, exist. These include implementing newly adopted basin plan provisions (including TMDLs). 40 CFR 122.62 discusses the circumstances under which a permit may be reopened. Notably, the permit contains a specific reopener to incorporate modifications to the basin plan. Since the proposed modification is based upon a reopener provided in the permit, either subdivision (a)(7) or (a)(3) provides</p> |

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| | | | | <p>authority for the modification.</p> <p>Reopening the permit at this time is wholly appropriate given that compliance with interim WLAs of the TMDL was required beginning in September 2008. All Permittees under the LA County MS4 Permit have been on notice since 2001 that the Fact Sheet of the Los Angeles County MS4 Permit anticipated the incorporation of TMDLs. Additionally, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the TMDL will be through the MS4 Permit (Basin Plan Table 7-2.1).</p> |
| 7.2 | City of Claremont | 7/24/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | Comment noted. Regional Board staff intends to begin the process of reissuing the LA County MS4 Permit in 2010. |
| 7.3 | City of Claremont | 7/24/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 7.4 | City of Claremont | 7/24/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 7.5 | City of Claremont | 7/24/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | The TMDL program, at the national and state level, is critical to achieving the ultimate goal of the federal Clean Water Act set forth in section 101(a). With 189 waterbodies and 822 individual listings of water quality impairment on the section 303(d) list for the Los Angeles Region alone, TMDLs are essential to set forth a plan and schedule for remedying impairments in these waterbodies and restoring full support for the beneficial uses of these waterbodies. |

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| | | | | TMDLs are required by the CWA section 303(d). Federal and state law also requires that TMDLs are incorporated into permits. See Response to 2.1. Furthermore, TMDL development in the Los Angeles Region is ordered under a court-established Consent Decree. The Los Angeles River Watershed Trash TMDL was one of 92 TMDLs required under the Consent Decree. |
| 7.6 | City of Claremont | 7/24/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Responses to 1.2, 2.1 and 7.1 |
| 8.1 | City of Commerce | 7/23/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of Commerce's understanding is the State is obligated to reissue permits on a 5 year cycle. | See Response to 7.1 |
| 8.2 | City of Commerce | 7/23/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |
| 8.3 | City of Commerce | 7/23/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 8.4 | City of Commerce | 7/23/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 8.5 | City of Commerce | 7/23/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |
| 8.6 | City of Commerce | 7/23/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Response to 7.6 |
| 9.1 | City of Downey | 7/21/2009 | Applying strict numeric limits to the iterative process | See Response to 4.1 |

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| | | | attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | |
| 9.2 | City of Downey | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 9.3 | City of Downey | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 9.4 | City of Downey | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 9.5 | City of Downey | 7/28/2009 | By modifying the expired permit before LA County's catch basin policy, the Regional Board is forcing cities to install BMPs under unfavorable existing County policies or face potential MS4 Permit Enforcement. Alternatively, the modification could delay enforcement until after the LA County revision. | The commenter does not specify how the Permittees' ability to comply with the proposed provisions will be affected by the District's catch basin policy. The County has informed Regional Board staff that it does not intend to prevent Permittees' installation of BMPs that do not conflict with the District's mission of flood protection. See also Response to 7.1 |
| 9.6 | City of Downey | 7/28/2009 | After Permit expiration, permit modification requires adoption a new Permit. | See Response to 7.1 |
| 9.7 | City of Downey | 7/28/2009 | The Regional Board should consider more resource sensitive and collaborative approaches to implementing the TMDL. | See Response to 2.1 |
| 9.8 | City of Downey | 7/28/2009 | There is no State Authority requiring incorporation of numeric effluent limits in MS4 Permits. | Cal. Water Code section 13263 requires that NPDES permits contain provisions consistent with the State Water Quality Management Plan. TMDLs are adopted by the Regional Board as amendments to the Regional Water Quality Control Plan (Basin Plan), which is a part of the State Water Quality Management Plan. Therefore, according to state law, the Regional Board is obligated to incorporate the provisions and requirements of the TMDL into the permit. Additionally, the State Board recently stated, "It is our intent that |

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| | | | | <p>federally mandated TMDLs be given substantive effect ... Doing so can improve the efficacy of California's NPDES storm water permits." The State Board concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit" (Order WQ 2009-0008).</p> |
| 9.9 | City of Downey | 7/28/2009 | <p>The efficacy of trash control BMPs does not warrant a zero discharge standard (trash retention technologies are still maturing).</p> | <p>The "full-capture" concept is a means of translating the zero discharge requirement into a BMP standard (i.e. technology equivalent) that would provide assurance that compliance with the zero numeric target could be reasonably achieved.</p> <p>"Full-capture" status is assigned to currently certified BMPs that meet the specified performance standard. This does not preclude the consideration of higher-performance BMPs as "full-capture" as they become available.</p> |
| 9.10 | City of Downey | 7/28/2009 | <p>The trash TMDL could be incorporated into the next MS4 Permit by referencing the need to utilize MEP-compliant BMPs to achieve the WLA. Implementation measures and schedules could then be developed through a memorandum of agreement between the Regional Board and the individual cities.</p> | <p>See Responses to 1.2 and 3.5</p> <p>Furthermore, the proposed permit provisions do allow Permittees to install and maintain certified full capture systems, which are deemed compliant, to achieve the WLAs.</p> <p>The Regional Board is required to establish effective permit limitations to</p> |

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| | | | | comply with water quality standards. 40 CFR §122.44(d)(1)(i) states, "Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." |
| 10.1 | City of Duarte | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 10.2 | City of Duarte | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 10.3 | City of Duarte | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 10.4 | City of Duarte | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 11.1 | City of Gardena | 7/27/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of Gardena's understanding is the State is obligated to reissue permits on a 5 year cycle. | See Response to 7.1 |
| 11.2 | City of Gardena | 7/27/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |
| 11.3 | City of Gardena | 7/27/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 11.4 | City of Gardena | 7/27/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 11.5 | City of Gardena | 7/27/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |

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| 12.1 | City of Inglewood | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 12.2 | City of Inglewood | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 12.3 | City of Inglewood | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 12.4 | City of Inglewood | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 13.1 | City of La Canada Flintridge | 7/28/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 13.2 | City of La Canada Flintridge | 7/28/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 13.3 | City of La Canada Flintridge | 7/28/2009 | The Regional Board should use BMPs in the NPDES Permit instead of placing the TMDL into the permit. | See Response to 1.2 |
| 13.4 | City of La Canada Flintridge | 7/28/2009 | The Trash TMDL should be implemented through memoranda of agreements. | See Response to 3.5 |
| 14.1 | City of Monrovia | 7/28/2009 | The Regional Board should follow USEPA guidance for incorporating TMDLs into NPDES storm water permits (the USEPA strongly encourages storm water permit writers to address the regulations consistency requirement through the use of an iterative BMP approach). | See Responses to 1.2, 2.1 and 4.1 US EPA's guidance, as outlined in its November 22, 2002 memorandum, begins by reiterating the requirement set forth in federal regulation that, "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs" (40 CFR 122.44(d)(1)(vii)(B)). Nothing in EPA's 2002 memorandum substitutes for those legally binding requirements. Wasteload allocations must be set to achieve water quality standards in the receiving water (see Clean Water Act |

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| | | | | <p>303(d)(1)(C)).</p> <p>EPA goes on to say that, “WQBELs [water quality-based effluent limitations] for NPDES-regulated storm water discharges that implement WLAs in TMDLs <u>may</u> be expressed in the form of best management practices (BMPs) under specified circumstances.” If effluent limitations are expressed as BMPs, there must be a reasonable expectation that the BMP(s) can achieve the wasteload allocation. The installation and maintenance of certified full capture systems is an available option for Permittees to demonstrate compliance because it satisfies that reasonable expectation.</p> <p>The Los Angeles River Watershed Trash TMDL and the proposed permit provisions allow Permittees the option of demonstrating compliance through a BMP-based approach, i.e. the progressive (i.e. iterative) installation of certified full capture systems, which have been determined in the TMDL and proposed permit provisions to perform to a standard sufficient to fully achieve the WLAs in the TMDL.</p> <p>However, the trash TMDL and the proposed permit provisions provide a variety of means to comply, including certified full capture systems, partial capture devices, and institutional controls. Unlike certified full capture systems, partial capture installations and institutional controls may not be</p> |

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| | | | | <p>sufficient to implement the final WLAs in the TMDL; therefore, per EPA's 2002 memorandum, it is necessary to include numeric effluent limitations and monitoring necessary to determine compliance.</p> <p>Furthermore, the trash TMDL is a case in which numeric effluent limitations are feasible and appropriate. While EPA recognized that high variability in storm events and minimal available data has generally resulted in difficulty characterizing pollutant loads in stormwater discharges from individual dischargers or groups of dischargers, this has been addressed in the trash TMDL. As part of the TMDL implementation, extensive monitoring was conducted early on to determine the baseline levels of trash discharges from each Permittee's jurisdictional area within the watershed. The TMDL and WLAs were revised to reflect the baseline trash discharges by jurisdiction determined from the two-year baseline monitoring. Additionally, a practical method for measuring annual trash discharges (i.e. Annual Storm Event Discharge calculations based on a Daily Generation Rate (DGR)) was developed to track reductions in trash discharges from the baseline.</p> <p>In sum, the proposed permit provisions, which incorporate the requirements of the WLAs in the TMDL as numeric effluent limitations, while providing a BMP-based option for compliance</p> |

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| | | | | through progressive installation of certified full capture systems, is fully consistent with EPA's policy memorandum dated November 22, 2002. |
| 14.1 | City of Monrovia | 7/28/2009 | The Regional Board should build on prior work conducted in response to the LA River Trash TMDL and design the new permit provision on an iterative BMP approach. | See Responses to 1.2, 2.1 and 4.1 The Regional Board is required to establish effective permit limitations to comply with water quality standards. |
| 15.1 | City of Pico Rivera | 7/28/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 15.2 | City of Pico Rivera | 7/28/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 15.3 | City of Pico Rivera | 7/28/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 15.4 | City of Pico Rivera | 7/28/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 16.1 | City of Rosemead | 7/23/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 16.2 | City of Rosemead | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 16.3 | City of Rosemead | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 16.4 | City of Rosemead | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 17.1 | City of San Gabriel | 7/27/2009 | The Regional Board's desire to incorporate the trash TMDL into the current LA MS4 Permit will further delay the reissuance of the Permit and the City of San Gabriel's understanding is the State is obligated to reissue permits on a 5 year cycle. | See Response to 7.1 |
| 17.2 | City of San Gabriel | 7/27/2009 | It is in the interest of all affected parties to reissue the LA MS4 Permit as soon as possible. | See Response to 7.2 |

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| 17.3 | City of San Gabriel | 7/27/2009 | There is no reason to incorporate the trash TMDL into the current MS4 Permit. | See Response to 1.1 |
| 17.4 | City of San Gabriel | 7/27/2009 | Using the existing MS4 Permit to admit TMDLs is inefficient and not cost effective. | See Response to 1.1 |
| 17.5 | City of San Gabriel | 7/27/2009 | The TMDL program at the State and national level is in need of replacement. To allow it to stand would likely result in the expenditure of scarce funds to meet numerical limitations improve water quality and meet Water Quality Standards. | See Response to 7.5 |
| 17.6 | City of San Gabriel | 7/27/2009 | The Regional Board should not incorporate a TMDL into the current or future MS4 permit, but should quickly reissue the LA MS4 Permit and include a provision that calls for the installation of trash excluder controls similar to the Ventura County MS4 Permit. | See Responses to 1.2 and 2.1 |
| 18.1 | City of Signal Hill | 7/23/2009 & 7/29/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 18.2 | City of Signal Hill | 7/23/2009 & 7/29/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 18.3 | City of Signal Hill | 7/23/2009 & 7/29/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 18.4 | City of Signal Hill | 7/23/2009 & 7/29/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 19.1 | City of West Covina | 7/21/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 19.2 | City of West Covina | 7/21/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 19.3 | City of West Covina | 7/21/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 19.4 | City of West Covina | 7/21/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 20.1 | City of Vernon | 7/23/2009 | Applying strict numeric limits to the iterative process | See Response to 4.1 |

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| | | | attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | |
| 20.2 | City of Vernon | 7/23/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 20.3 | City of Vernon | 7/23/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 20.4 | City of Vernon | 7/23/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 21.1 | City of Whittier | 7/24/2009 | Applying strict numeric limits to the iterative process attempts to hold the cities liable for numeric certainty in an inherently uncertain process (science and technology are still being perfected). | See Response to 4.1 |
| 21.2 | City of Whittier | 7/24/2009 | The Regional Board has a responsibility to adopt reasonable regulations. | See Response to 3.3 |
| 21.3 | City of Whittier | 7/24/2009 | The Regional Board should use BMPs in the NPDES Permit instead of numeric limits. | See Response to 1.2 |
| 21.4 | City of Whittier | 7/24/2009 | TMDLs should be implemented through memoranda of agreements. | See Response to 3.5 |
| 22.1 | Los Angeles Stormwater Quality Partnership | 7/28/2009 | A BMP approach is consistent with other Regional Boards and USEPA guidance, and builds upon BMP implementation already conducted in response to the LA River Trash TMDL. | See Response to 9.10 |
| 23.1 | Heal The Bay | 8/12/2009 | The Regional Board's proposal is required by law. | Staff agrees. See Response to 2.1 |
| 23.2 | Heal The Bay | 8/12/2009 | Staff's proposal is consistent with Regional Board and State Board actions. | Staff agrees. See Response to 9.8 |
| 23.3 | Heal The Bay | 8/12/2009 | The Regional Board should broaden the scope of the reopener to include additional TMDLs. | All available WLAs assigned to Permittees under the Los Angeles County MS4 permit will be incorporated into the MS4 permit, as resources permit and not later than the reissuance of the permit. At this time, the Regional Board is only able to address the incorporation of the LA River Watershed Trash TMDL WLAs. |
| 23.4 | Heal The Bay | 8/12/2009 | The Regional Board should clarify that Compton Creek is covered by the LA River Trash TMDL. | Compton Creek is a sub-watershed of the Los Angeles River watershed and its trash impairments are addressed, in |

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| | | | | their entirety, through the Los Angeles River Watershed Trash TMDL. All jurisdictions within the Compton Creek watershed are assigned WLAs for trash discharges under this TMDL. For this reason, the trash impairment in Compton Creek is recognized as being addressed by an EPA approved TMDL on the 2008 (most recent) 303(d) list that has been approved and adopted by the Regional Board. |
| 24.1 | Santa Monica Baykeeper | 7/28/2009 | The Municipal Storm Water Permit Reopener to incorporate the LA River Trash TMDL is required by the Clean Water Act and the California Water Code. | Staff agrees. See Response to 2.1 |
| 24.2 | Santa Monica Baykeeper | 7/28/2009 | Municipal Storm Water Dischargers have had adequate time to take measures to come into compliance with the TMDL and a Permit reopener is timely. | Staff agrees. See Response to 4.1 |
| 24.3 | Santa Monica Baykeeper | 7/28/2009 | The Regional Board should clarify that Compton Creek is covered by the LA River Trash TMDL. | See Response to 23.4 |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | Public Comment period is unclear. | Four opportunities for public comment were provided prior to the Board's consideration. These include the workshop held on July 29, 2009; the written comment period following the workshop, which ended on August 12, 2009; the written comment period following the October 8, 2009 public notice of the draft permit provisions and supporting documents, which ended on November 9, 2009; and the upcoming board hearing on the matter scheduled for December 10, 2009. |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | Incorrect reference to 40 CFR 122.44(d)(4)9vii)(B) (the section does not exist) | Staff is uncertain where the reference in question exists, but the workshop public notice correctly references 40 CFR §122.44(d)(4)(vii)(B) |
| 25.1 | Charles Abbott Associates, Inc. | 7/28/2009 | The Regional Board has not given any input on submitted LA River Trash TMDL implementation plans acceptability. | The LA River Trash TMDL is clear about the means by which compliance |

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| | | | | <p>with WLAs can be achieved– full capture systems, partial capture devices, and institutional controls. The TMDL is also clear that Permittees can apply any combination of these approaches, at their discretion, as long as the applicable WLAs are met. The implementation reports chiefly serve as a means of informing the Regional Board which approach(es) responsible jurisdictions intend to apply towards TMDL compliance. However, the Regional Board is in the process of providing input on these reports where it has been specifically requested.</p> |
| 26.1 | Richards, Watson, and Gershon | 7/28/2009 | Practically, the elimination of all trash, as required by the TMDL, is difficult to measure and would require heroic efforts during times of winter storms. | <p>For Permittees installing certified full capture systems, no measurement of trash is necessary. This is also the case for those installing partial capture devices with pre-determined site-specific performance.</p> <p>When combining partial capture installations with institutional controls or relying solely on institutional controls, however, an estimate of trash discharges is necessary for the purpose of determining compliance. This estimate is derived from a daily generation rate (DGR) for trash that is measured annually in a representative area of a given jurisdiction. The process for determining the DGR is outlined in the staff report for the Los Angeles River Watershed Trash TMDL and further detailed in the proposed permit provisions (see Part 7.1.B(1)(b)(2)).</p> <p>This process requires a single</p> |

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| | | | | <p>measurement effort each year in the dry season and bases all wet weather discharge on this measurement. Therefore, no physical measurement of trash is required for most of the year and especially not during winter storms.</p> |
| 26.2 | Richards, Watson, and Gershon | 7/28/2009 | <p>Scientifically, the measuring of trash (itself a wide category) at a point that will effectively capture just a particular's City storm water discharges is a process that the Cities do not currently comprehend.</p> | <p>See Response to 26.1</p> <p>Regional Board staff has always been available to provide clarification, where necessary. Also, some cities have already submitted reports of trash measurements that indicate full comprehension of methods provided in the TMDL staff report.</p> <p>That notwithstanding, Permittees are not required to use the methodology outlined in the TMDL for estimating trash discharges. Permittees have the option of developing alternative compliance monitoring as long as the selected method is scientifically defensible. (See proposed provisions Part 7.1.B(1)(b)(3).) The Executive Officer will review any proposed alternatives and will issue approvals where appropriate.</p> <p>However, in recognition that further clarification of the method in question is warranted, this has been provided in the proposed permit provisions.</p> |
| 26.3 | Richards, Watson, and Gershon | 7/28/2009 | <p>Legally, the City does not understand why the Regional Board feels compelled to move to strict numeric limits in light of USEPA policy guidance, the State Board's 2006 Blue Ribbon Panel Report, or any other standard.</p> | <p>See Responses to 2.1, 4.1 and 9.10</p> |
| 27.1 | Rutan | 7/27/2009 | <p>No TMDL should be incorporated into an NPDES Permit until the Arcadia case has been resolved and the review</p> | <p>The <i>Cities of Arcadia</i> case is currently on appeal, and accordingly there is no</p> |

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| | | | and necessary revisions of the Water Quality Standards completed. | <p>final judgment. Furthermore, the commenters already litigated and lost the claim that a prohibitory injunction was appropriate.</p> <p>Nevertheless, the TMDL has already undergone the analysis contemplated by the <i>Arcadia</i> case, and the courts have rejected the commenters' claims that the TMDL's 13241 analysis was inadequate. Failing to incorporate TMDLs into NPDES permits would be inconsistent with 40 CFR 122.44(d)(1)(B)(vii), and the timelines set forth in the TMDL itself.</p> |
| 27.2 | Rutan | 7/27/2009 | The term of the existing LA MS4 Permit has expired and the incorporation of the LA River Trash TMDL or any other TMDL should be addressed with the pending renewal process. | <p>See Response to 7.1</p> <p>Additionally, the Regional Board's response to the ROWDs submitted in June 2006, stated that, "[p]ursuant to 40 CFR 122.6, Order 01-182 shall remain in effect and enforceable until a replacement LA MS4 Permit is adopted by the board."</p> |
| 27.3 | Rutan | 7/27/2009 | Federal and State Policies provide for the use of BMPs in lieu of numeric WQBELs, when incorporating a TMDL. | See Response to 1.2 |
| 27.4 | Rutan | 7/27/2009 | Due to the variability of storm water, the USEPA believes permit limits can be expressed as BMPs, and only in rare instances will numeric limits be used. | See Responses to 1.2, 4.1, and 14.1 |
| 27.5 | Rutan | 7/27/2009 | Any attempt to impose strict compliance with WLAs in a storm water permit, or impose requirements stricter than federal law, or that do not exist in federal law, requires compliance with California Water Codes 13241 and 13000. | The narrative objectives on which the TMDL numeric target and associated WLAs are based are the same as the narrative objectives recommended by US EPA under section 304(a) of the Clean Water Act. The TMDL and the WLAs established therein were approved by the US EPA under CWA section 303(d) as adequate to implement the water quality objectives |

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| | | | | <p>for floatable materials and solid, suspended and settleable materials contained in the Basin Plan. Federal law and regulation requires that NPDES permits contain provisions consistent with the assumptions and requirements of any available WLA.</p> <p>Furthermore, since the provisions of the permit are practicable and reasonable, they are within the requirements of CWA section 402(p)(3)(B)(iii), and are therefore not beyond federal law. Accordingly, the holding of <i>Burbank v. SWRCB</i> is not triggered by this permit amendment. See finding 52.</p> <p>In any event, in <i>Cities of Arcadia v. SWRCB</i>, the commenters litigated and lost the claim that the Water Board's compliance with Water Code section 13241 was inadequate when the TMDL was adopted. The analysis undertaken in that proceeding is the same analysis that would be undertaken in this proceeding, with however, the benefit of several more years of development of economically achievable compliance options. The commenters have failed to explain how the analysis undertaken during the TMDL adoption is not applicable in this proceeding.</p> <p>See also Response to 27.1</p> |
| 27.6 | Rutan | 7/27/2009 | Any additional monitoring or required investigations into water quality would trigger the need for a cost-benefit analysis pursuant to California Water Code Sections 13225, 13165, and 13267. | Monitoring and reporting requirements under this permit are issued pursuant to Water Code section 13383, not 13165, 13225 or 13267. |
| 27.7 | Rutan | 7/27/2009 | Any added mandates on the Cities with new permit forms | Staff does not believe that any of the |

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| | | | that are not mandated by federal law, must be funded in accordance with the California Constitution. | permit modifications are unfunded state mandates, as that term is used in the California Constitution. Nevertheless, should the commenters believe they have claim for subvention, the appropriate venue to determine that claim is with the Commission on State Mandates, not the Regional Board. See also Response to 27.6 |