

Responsiveness Summary
Proposed Modification to the County of Los Angeles MS4 Permit to Incorporate
Provisions of the Los Angeles River Trash TMDL
Comments Due Date: November 9, 2009

1. City of Hidden Hills (Hidden Hills)
2. City of Los Angeles (Los Angeles)
3. City of Monrovia, Department of Public Works (Monrovia)
4. City of San Fernando (San Fernando)
5. City of San Marino (San Marino)
6. City of South El Monte (South El Monte)
7. City of Vernon (Vernon)
8. County of Los Angeles (LAC)
9. County of Los Angeles Flood Control District (LACFCD)
10. Joyce Dillard (Dillard)
11. Heal the Bay (HTB)
12. Los Angeles Stormwater Quality Partnership (LASQP) ¹
13. Rutan, Attorney at Law (Rutan) ²
14. Ray Tahir (Tahir) ³

No.	Author	Date	Comment	Response
1.1	Hidden Hills	11/6/09	We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit	See Responses to comments 12.1 – 12.3.
1.2	Hidden Hills	11/6/09	The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional	The antibacksliding provisions of the Clean Water Act stipulate that effluent limitations contained in NPDES permits may not be relaxed unless the less stringent effluent limitations comply with the antidegradation requirements

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

² Submitted on behalf of the Cities of Arcadia, Carson, Commerce, Downey, Irwindale, Monterey Park, Signal Hill, South Gate and Vernon, and the ad hoc group of cities known as the Coalition for Practical Regulation (CPR). 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.

³ Representing the Cities of San Gabriel, San Marino, Duarte, Irwindale, and South El Monte.

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			<p>Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p>	<p>contained in §303(d)(4), or they fall into one of the statutory exceptions to this bar on backsliding. In either case, the less stringent effluent limitations must not result in a violation of the applicable water quality standard. Where a water quality standard has not yet been attained, §303(d)(4)(A) provides that any effluent limitation based on a WLA established in a TMDL may be revised if all revised effluent limitations based on the TMDL will result in the attainment of the applicable water quality standard. Any revised WLAs established during the reconsideration of the Los Angeles River Watershed Trash TMDL would be set to achieve the applicable water quality standards, as required by federal law; therefore, any revised effluent limitations based on the revised WLAs, even if less stringent, would be permitted under the antibacksliding provisions.</p>
1.3	Hidden Hills	11/6/09	<p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.</p>	<p>The 50% reduction in question must be <u>achieved and sustained</u> prior to the reconsideration of the final waste load allocation. An initial demonstration of meeting the 50% target would likely not be made earlier than September 30, 2010, as the 50% reduction is not required before then. Therefore the earliest reasonable time to demonstrate that it has been sustained would be September 30, 2011, when a 60% reduction would be required. The determination of 50% compliance will be made on a watershed-wide basis. Therefore the Regional Board could be in a position to reconsider the final WLA in the period between October 2011</p>

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				and September 2012, depending upon the responsible jurisdictions' compliance.
2.1	Los Angeles	1/09/09	Within the Findings document, Finding No. 57 it states "...In the latter case, compliance shall be determined based on direct measurement of trash discharges or site specific performance data." The City wants to ensure that "site specific performance" does not literally mean testing the performance of each device at every catch basin in the City, but that the intent is to demonstrate the performance of the device(s) within the specific jurisdiction or region. The City is concerned that the only proposed method for determining the effectiveness of institutional measures is through direct measurement of trash.	The City is correct. "Site specific performance data" as used in the proposed permit provisions related to partial capture devices means data on the demonstrated performance of the device <i>in the jurisdictional area</i> , not at each individual site of installation. However, such data should be collected under different conditions (e.g. low to high trash loading). See proposed provisions in Part 7.1.B(1)(b)(1), which have been revised to clarify this. Revisions have also been made to the Fact Sheet to clarify how performance must be demonstrated.
2.2	Los Angeles	1/09/09	<p>The City has a huge storm drain system with approximately 50,000 catch basins dispersed over 450 square miles, so the task of direct measurement is neither practical nor feasible.</p> <p>Therefore, our recommended change is as follows: "... In the latter case, compliance shall be determined based on direct measurement of trash discharges or jurisdiction/region specific performance data. For a large municipality/jurisdiction with 10,000 or more catch basins, the performance of the institutional measures may be determined through a pilot study performed within a representative area of such municipality/jurisdiction. The results of the study may then be used to report the effectiveness of the institutional measures deployed."</p>	<p>See Response to 2.1 as it related to performance data on partial capture devices.</p> <p>There is no requirement for direct measurement of all trash discharges in the Los Angeles River Watershed Trash TMDL or the proposed permit provisions.</p> <p>For Permittees installing 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 as described in the proposed provisions (see Part 7.1.B(1)(b)(1)).</p> <p>When combining partial capture installations with institutional controls or relying solely on</p>

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				<p>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)). Results from the representative area are extrapolated over the greater jurisdictional area. Therefore there is no need for direct measurement of trash throughout an entire jurisdictional area. Also, measurement of trash from the representative area(s) is limited to a single measurement effort each year in the dry season. All wet weather discharges are calculated based on this measurement.</p> <p>Annual recalculation of trash generated in the representative area allows for the demonstration of progressive trash reduction, as well as an iterative adaptive management approach to the implementation of trash control measures (i.e. jurisdictions can modify their implementation measures based on performance results).</p> <p>In addition, the annual assessment of the performance of institutional controls, specific to each jurisdiction, may result in the generation of sufficient site-specific data to overcome the uncertainty associated with the performance of</p>

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				<p>institutional control measures. This may eventually allow for determination of compliance with the final effluent limitation to be based on established performance as is the case for certified full capture systems and partial capture devices.</p> <p>Therefore, the current approach in the proposed permit provisions contains all the elements of the commenter's proposed pilot study.</p> <p>However, per the trash TMDL and proposed permit provisions, Permittees have the option of developing alternative compliance monitoring as long as the selected method is scientifically defensible (see Part 7.1.B(1)(b)(3)). The Executive Officer will review any proposed alternatives and will issue approvals where appropriate.</p> <p>The City of Los Angeles is encouraged to develop a work plan for the proposed pilot study for consideration by the Executive Officer. Regional Board staff will be available for consultation where necessary.</p>
2.3	Los Angeles	1/09/09	<p>Within the Findings document, Finding No. 53 it states "...Violations of the effluent limitations, therefore, are limited to the days of a storm event greater than 0.25 inches." The reference to a storm event greater than 0.25 inches to assess violations is inaccurate and appears to be in conflict with the Full Capture System's definition.</p>	<p>Not every storm event results in trash discharges. The TMDL states that storms of a magnitude 0.25" and greater tend to mobilize trash. Therefore, only storms of that magnitude or greater would be considered when determining whether or not a Permittee is in violation of the effluent limitation. The 0.25" storm event in question is the minimum storm</p>

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				<p>event below which trash discharges are not expected to occur.</p> <p>This is not related to the performance standard of the full capture devices, which requires devices or systems to capture trash generated from a 1-year 1-hour storm (~ 0.6"). This performance standard is used for the sole purpose of determining the adequacy of a proposed full capture device.</p> <p>This has been clarified in Finding No. 53.</p>
2.4	Los Angeles	1/09/09	We recommend deleting the sentence and replacing it with one that references the definition of a full capture device in the TMDL.	See Response to 2.3
3.1	Monrovia	11/09/09	We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit	See Responses to comments 12.1 – 12.3.
3.2	Monrovia	11/09/09	<p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p>	See Response to 1.2

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3.3	Monrovia	11/09/09	The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.	See Response to 1.3
4.1	San Fernando	11/06/09	We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit	See Responses to comments 12.1 – 12.3.
4.2	San Fernando	11/06/09	The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted. If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.	See Response to 1.2
4.3	San Fernando	11/06/09	The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear. At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.	See Response to 1.3
5.1	San Marino	11/05/09	We fully join in and support the Los Angeles Stormwater Quality Partnership's ("LASQP") comment letter on the proposed limited reopener of the LA MS4 Permit	See Responses to comments 12.1 – 12.3.

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5.2	San Marino	11/05/09	<p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p>	See Response to 1.2
5.3	San Marino	11/05/09	<p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010.</p>	See Response to 1.3
6.1	South El Monte	11/09/09	<p>The City incorporates by reference comments prepared by Richard Montevideo on behalf of the Coalition for Practical Regulations entitled: Comments on Proposed Modification to the County of Los Angeles Municipal Separate Storm Sewer System Permit Regarding the Los Angeles River Trash Total Maximum Daily Loads, 5, bearing the date of November 2009.</p>	See Responses to 13.1 – 13.27.
6.2	South El Monte	11/09/09	<p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional</p>	See Response to 1.2

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			<p>Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p>	
6.3	South El Monte	11/09/09	<p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no later than September 2010</p>	See Response to 1.3
7.1	Vernon	11/05/09	<p>The City is, however, concerned that the Clean Water Act's prohibition on antibacksliding, might be construed to prohibit the Regional Board from implementing an effluent limitation less stringent than those in the existing permit if, at the review and reconsideration step, the Regional Board finds that less stringent effluent limitations are warranted.</p> <p>If the Clean Water Act essentially prohibits the Regional Board from reconsidering the final Waste Load Allocations once a reduction of 50% has been achieved, the City objects to the incorporation of the LA River Trash TMDL into the LA MS4 Permit at least until this reconsideration step has been completed.</p>	See Response to 1.2
7.2	Vernon	11/05/09	<p>The Time Period During Which the Review and Reconsideration of the Final Waste Load Allocations is to Occur Must Be Clear.</p> <p>At minimum, any revisions to the LA MS4 Permit should make clear that this reconsideration step will take place no</p>	See Response to 1.3

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			later than September 2010.	
8.1	LAC	11/09/09	"Performance data" as it is used in Part 7.1.B(1)(a)(3) is vague and superfluous and therefore should be deleted.	The references to "performance data" under Parts 7.1.B(1)(a)(3) and 7.1.B(2)(b) as it relates to Full Capture Systems has been deleted. Performance data must be submitted as part of the certification process outlined in Part 7.1.B(1)(a)(1).
8.2	LAC	11/09/09	<p>Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties.</p> <p>The Settlement Agreement requires the Regional Board to review and reconsider the final waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. The Regional Board subsequently incorporated this provision into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3.</p> <p>Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that is in the Basin Plan.</p>	Finding No. 50 will be modified with the addition of the following sentence. "Should this reconsideration result in a modification to the final wasteload allocations, the permit will be reopened pursuant to Part 6., paragraph I.1.b, to ensure the effluent limitations contained in Tables 1a and 1b of Appendix 7-1 are consistent with the assumptions and requirements of any revised wasteload allocations. (40 CFR § 122.44(d)(1)(vii)(B).)" This will align the proposed permit modifications with the TMDL and the Settlement Agreement.
8.3	LAC	11/09/09	<p>The Trash TMDL Waste Load Allocations should be incorporated into the Permit as Municipal Action Levels, Not Effluent Limitations.</p> <p>Proposed Appendix 7.1 calculates the waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the</p>	<p>First, regarding the use of MALs to implement the Trash TMDL WLAs:</p> <p>The State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits recommended the use of "action levels" for catchments (drainage areas) not treated by a structural or treatment BMP, in</p>

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			<p>caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action Levels Per Storm year", and references in proposed Part 7 to effluent limitations should be similarly revised.</p> <p>If this change is not made, the proposed amendment to the Permit would be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA guidance on incorporating TMDL waste load allocations into storm sewer permits.</p>	<p>lieu of setting numeric limits. These action levels would typically be representations of runoff quality, based on "outfall" monitoring data, for a geographical area. The panel proposed this approach as a means of identifying those catchments that discharge pollutants at levels clearly above the normal observed variability in stormwater discharges in order to focus implementation efforts on these areas. These action levels are expected to lower as a result of targeted management actions. The derivation of action levels is based on outfall sampling and does not take Water Quality Standards into consideration. Therefore, while this recommended approach may be an effective means of assessing stormwater program effectiveness, it does not directly address the issue of achieving receiving water quality standards and cannot be applicable to impaired waterbodies.</p> <p>TMDLs are developed when existing water quality control efforts (or programs) have failed to achieve water quality conditions necessary to support designated beneficial uses. TMDL waste load allocations (WLAs) are assigned to attain water quality standards in order to provide water quality sufficient to support the beneficial uses of a waterbody. These WLAs are generally set at or below the applicable water quality objective. The effluent limitations in the proposed permit provisions are consistent with the WLAs. Federal regulation requires that NPDES permits</p>

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				<p>must contain effluent limits and conditions consistent with the requirements and assumptions of available WLAs (40 CFR 122.44(d)(1)(vii)(B)). Incorporating the WLAs as Municipal Action Levels rather than effluent limitations would be contrary to federal regulations, as Action Levels have no basis in the water quality standards that the WLAs are designed to attain.</p> <p>Note: Action Levels are referred to as MALs by the commenter.</p> <p>Second, in TMDLs, which are adopted as regulations, point sources are assigned 'wasteload allocations'. These are then incorporated into individual permits as 'effluent limitations'. 'Wasteload allocations' and 'effluent limitations' are terms of art used in TMDLs and permits, respectively. Therefore, it is not inconsistent to refer to 'effluent limitations' in the permit, which have been derived from 'wasteload allocations' in a TMDL.</p> <p>Third, as for EPA's November 22, 2002 memorandum, EPA 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</p>

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				<p>for those legally binding requirements. Wasteload allocations must be set to achieve water quality standards in the receiving water (see Clean Water Act 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 ... When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record ... needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. ... If it is determined that a BMP approach ... is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this."</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,</p>

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				<p>partial capture devices, and institutional controls. Unlike certified full capture systems, partial capture installations and institutional controls may not be sufficient to implement the final WLAs in the TMDL; therefore, per EPA's memo, 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</p>

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				<p>incorporate the requirements of the WLAs in the TMDL as numeric effluent limitations, while providing a BMP-based option for compliance through progressive installation of certified full capture systems, is fully consistent with EPA's policy memorandum dated November 22, 2002.</p> <p>As for the Storm Water Panel Recommendations to the State Board (June 19, 2006), the panel's observations are largely inapplicable to trash discharges. The panel notes that it is difficult to (1) determine the level of control needed to protect beneficial uses, (2) monitor for enforcement of numeric effluent limitations, and (3) design a BMP that will produce a desired outflow concentration for a constituent of concern. The Los Angeles River Watershed Trash TMDL and proposed permit provisions address all these areas. The TMDL and supporting documentation identify (1) the level of control to protect beneficial uses through the establishment of the TMDL numeric target and BMP equivalent, (2) a methodology for monitoring compliance with the WLAs and associated effluent limitations through the use of Annual Storm Event Discharge calculations based on a representative DGR for the jurisdiction, or alternative scientifically defensible methods, and (3) a performance standard for BMPs that is sufficient to achieve the WLAs and, therefore, can be used in lieu of direct measurement of trash discharges to demonstrate compliance.</p>

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				Therefore, Regional Board staff concludes that it is feasible to establish numeric effluent limitations to implement the WLAs based on the fact that the constraints on setting numeric effluent limitations identified by the panel have all been addressed in the case of regulating trash discharges as outlined in the Los Angeles River Watershed Trash TMDL.
8.4	LAC	11/09/09	The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits.	See Response to 8.3
8.5	LAC	11/09/09	The County requests that the following documents be admitted into evidence and made a part of the administrative record: Settlement Agreement Regarding Total Maximum Daily Loads for Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm Water Panel Recommendations to the California State Water Resources Control Board, June 19, 2006). EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."	Staff will recommend that these documents be added to the administrative record.
9.1	LACFCD	11/09/09	Proposed Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties	See Response to 8.2

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			<p>The Settlement Agreement requires the Regional Board to review and reconsider the final waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. The Regional Board subsequently incorporated this provision into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3. Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that in the Basin Plan.</p>	
9.2	LACFCD	11/09/09	<p>Because the District Cannot Lawfully be made liable for actions of other Permittees over which it has no control, Proposed Part 7.1.B(4) should be deleted.</p>	<p>Part 7.1.B(4) recognizes the commenter's and other Permittees' statements in a variety of other proceedings that they lack authority, alternatively over particular parts of the MS4 infrastructure, or the land area discharging to the MS4. The MS4 infrastructure is by design a joint system that conveys and discharges commingled storm and non storm water runoff (containing pollutants) from municipal jurisdictions across the region to multiple waters of United States, including in relevant part, waters in the Los Angeles River Watershed. The MS4 permit was adopted following the filing of a report of waste discharge (ROWD), by the Los Angeles County Director of Public Works, on behalf of the "Los Angeles County Flood Control District, Los Angeles County, and the [83] incorporated cities." The ROWD proposed, and the MS4 permit therefore designates, the Flood Control District as the Principal Permittee. The Principal Permittee is expressly charged under the permit with the</p>

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				<p>responsibility for coordinating and facilitating activities necessary to comply with the requirements of the permit and acting as liaison between the other Permittees and the Regional Board on permitting issues. The principal Permittee is also obligated to comply with the provisions of the permit that generally apply to the other Permittees as well (including implementing the SQMP within its jurisdiction). These are spelled out generally, inter alia, in Part 3, paragraphs D and E, respectively. Furthermore, the provisions of paragraph G require all Permittees to possess adequate legal authority to implement the requirements of the permit, including prohibiting litter from being discharged into the MS4 and to require the use of BMPs to prevent or reduce the discharge of pollutants to the MS4. The Clean Water Act and Porter Cologne Act place responsibility on the Flood Control District (the owner/operator) for discharges from its MS4 (a point source). The Co-Permittees are also responsible to the extent they control or discharge to portions of the MS4.</p> <p>Under these circumstances, it is not the responsibility of the Regional Board to determine which Permittees have legal authority over parts of the MS4 physically within their jurisdictions versus the Flood Control District. That responsibility properly rests with the Flood Control District and the other Co-Permittees. Neither is it the responsibility of the Regional Board to mediate who should perform upgrades</p>

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				<p>to the MS4 infrastructure as between independent governing bodies with complementary or overlapping authority within the same jurisdictional area (i.e., the District versus specific Permittees in whose jurisdictional boundaries District controlled portions of the MS4 are situated). Where responsibility over the MS4 infrastructure has not been made apparent to the Regional Board, the joint owners/operators/dischargers may appropriately be held jointly and severally liable by the Regional Board for the violations of the effluent limitations. Nevertheless, both the Permittee and the District have the right to seek indemnity or contribution from the other in a separate proceeding as they deem appropriate.</p> <p>Since the trash that is the subject of the TMDL emanates from the jurisdiction and the relevant portions of the MS4 are physically within the geographic boundaries of the jurisdiction, the proposed permit provisions require non-District Co-Permittees to control discharges of trash from their jurisdictional areas to the MS4, as required by the TMDL. As noted in the draft permit provisions and accompanying documents, Co-Permittees have a variety of options for controlling these discharges, which can be broadly classified as full capture, partial capture, and institutional controls.</p> <p>In its capacity as the Principal Permittee, however, and the owner/operator of significant</p>

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				<p>portions of the MS4, including 120,000 catch basins throughout Los Angeles County, the District also has an obligation to facilitate activities necessary to comply with the requirements of the permit, which may include the timely installation and maintenance of trash control devices (i.e. certified full capture systems or partial capture devices) in District-owned catch basins within a Co-Permittee's jurisdiction.</p> <p>In response to the District's comments and in view of subsequent communications between District and Regional Board staff, staff has proposed modifying the language of Part 7.1.B(4) to better account for the District's legal obligations, both as Principal Permittee and as the Flood Control District. Therefore, Part 7.1.B(4) has been modified to require a showing by a Co-Permittee that the District has inappropriately prevented the Co-Permittee from undertaking activities to comply with the permit provisions. Specifically, Co-Permittee must show that the District has denied, without good cause, entitlements or other necessary authority requested by a Co-Permittee to facilitate the timely installation and/or maintenance of such devices in parts of the MS4 physical infrastructure that are under the authority of the District, before the District may be held jointly and severally liable for violations of the effluent limitations assigned to that Permittee. The District's liability, however, would be limited to violations related to the drainage areas within</p>

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				the jurisdiction where the District has authority over the relevant portions of the MS4 physical infrastructure. The proposed language also expressly preserves the District's and Co-Permittees' rights to seek indemnity.
9.3	LACFCD	11/09/09	There is no legal basis for joint and several liability under either the California Water Code or the Clean Water Act.	See Response to 9.2
9.4	LACFCD	11/09/09	The Trash TMDL Waste Load Allocations should be incorporated into the Permit as Municipal Action levels, Not Effluent Limitations. Proposed Appendix 7-1 calculates the trash waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action Levels Per Storm Year", and references in proposed Part 7 to effluent limitations should be similarly revised. If this change is not made, the proposed Permit amendment will be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA's guidance on incorporating TMDL waste load allocations into storm sewer permits.	See Response to 8.3
9.5	LACFCD	11/09/09	The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits.	See Response to 8.4
9.6	LACFCD	11/09/09	The District requests that the following documents be admitted into evidence and made a part of the administrative record: Settlement Agreement Regarding Total Maximum Daily	See Response to 8.5

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			<p>Loads for Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed.</p> <p>The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm water panel Recommendations to the California State Water Resources Control Board, June 19, 2006).</p> <p>EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."</p>	
10.1	Dillard	11/09/09	How does this reopener to the Basin Plan change the non-adjudicated status of the Hollywood Basin?	The proposed reopener is not an amendment to the Basin Plan; it is a modification of the provisions of Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, which regulates urban runoff and stormwater discharges to waters within the Los Angeles Region, to implement the Los Angeles River Watershed Trash TMDL that was incorporated into the Basin Plan. The reopener does not affect the status of the Hollywood Basin.
10.2	Dillard	11/09/09	How does this reopener to the Basin Plan change the Non-adjudicated status of the Santa Monica Basin (not applicable to this reopener)?	See Response to 10.1
10.3	Dillard	11/09/09	Why are the Upper Los Angeles River Area Basins considered in the Basin Plan of the Coastal Watersheds of the Los Angeles and Ventura Counties?	The jurisdiction of the Los Angeles Regional Water Quality Control Board is established by statute in the Cal. Water Code section 13200(d) and encompasses all waters of the state, including surface waters and ground waters, within the statutory boundaries.
10.4	Dillard	11/09/09	Why is the Hollywood Basin considered in the Basin Plan of the Coastal Watersheds of Los Angeles and Ventura	See Response to 10.3

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10.5	Dillard	11/09/09	How is private property being monitored for compliance? Have the private property owners been named in any legal action over any of these MS4 and/or NPDES requirements.	<p>The permit generally requires the Permittees to monitor and control discharges into the MS4 by the citizens under their jurisdiction. Some private property is monitored for compliance under individual industrial stormwater permits, the statewide Industrial Storm Water General Permit (Order 97-03-DWQ), and the statewide Construction General Stormwater Permit (2009-0009-DWQ, effective 07/01/10). Each of these permits has its own monitoring and reporting requirements. See http://www.waterboards.ca.gov/water_issues/programs/stormwater/annualreport.shtml for annual reports submitted under the General Industrial Permit; http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wgo_2009_0009_app_3.pdf (bioassessment monitoring requirements for construction projects meeting certain thresholds); and specific monitoring and reporting requirements identified in the respective individual orders. Other private properties such as commercial properties are inspected for compliance by the municipalities as required by the LA County MS4 Permit (Order 01-182 as amended), Part 4 (Special Provisions), subparts B (Public Information and Participation Program), C (Industrial/Commercial Facilities Control Program), and G (Illicit Connections and Illicit Discharges Elimination Program).</p>

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11.1	HTB	11/09/09	The Regional Board's Proposal Is Required By Law	Staff agrees. 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.
11.2	HTB	11/09/09	Staff's Proposal is Consistent with Regional Board and State Board Actions and USEPA Guidance.	Staff agrees. The proposed reopener is consistent with the State Board's recent decision in which it stated, "It is our intent that 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). Additionally, US EPA recently stated in its comment letter dated May 29, 2008, "EPA supports the approach used for incorporating TMDL WLAs in the August 28, 2007 second draft of this permit, in which the

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				WLAs were incorporated as numeric water quality-based effluent limits (WQBELs) ... Under this approach, clear compliance determinations may be made, and the effectiveness of stormwater controls on water quality may be assessed. As a general matter, MS4 permits, many of which represent the fourth generation of permits to control municipal stormwater, should enable permitting authorities to more effectively determine compliance and evaluate impacts on water quality."
11.3	HTB	11/09/09	Heal the Bay requests that Order No. R8-2009-0030 be included in the administrative record for this matter. This evidence is relevant to demonstrate that other regional water boards have incorporated TMDL wasteload allocations expressed as numeric effluent limits in MS4 permits	Staff will not recommend inclusion of an order issued by the Santa Ana Regional Water Quality Control Board into the administrative record. Existing applicable legal authorities (including but not limited to SWRCB Order WQ 2009-0008) provide adequate authority for incorporation of the Trash TMDL and WLAs established therein into the MS4 permit in the manner proposed (including with numeric effluent limitations), or in an alternative manner that does not include numeric effluent limitations.
11.4	HTB	11/09/09	Heal the Bay requests that the USEPA letter be included in the administrative record for this matter. This evidence is relevant to demonstrate that USEPA has agreed that WLAs expressed as numeric limits are appropriate for MS4 permits	Staff will recommend inclusion of the US EPA letter dated May 29, 2008 regarding the Ventura County MS4 Permit into the administrative record.
11.5	HTB	11/09/09	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

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				able to address the incorporation of the LA River Watershed Trash TMDL WLAs.
11.6	HTB	11/09/09	At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well?	See Response to 11.5 Regarding the Ballona Creek Trash TMDL, the default wasteload allocations have not been updated to reflect the results of the Baseline Monitoring study conducted for that purpose. Therefore, it was not considered for inclusion in the proposed reopener.
11.7	HTB	11/09/09	The Regional Board should also include the Malibu Nutrients and Bacteria TMDLs in the Reopener. We have included example language for several additional TMDLs in Attachment A.	See Response to 11.5
11.8	HTB	11/09/09	The Regional Board Should Clarify that Compton Creek and other Tributaries are Covered by the L.A. River Trash TMDL.	Compton Creek is a sub-watershed of the Los Angeles River watershed and its trash impairments are addressed, in 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.
11.9	HTB	11/09/09	Heal the Bay requests that the OPC's Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter be included in the administrative record for this matter. This evidence is relevant to demonstrate that trash reduction is a state priority.	Staff will evaluate whether to recommend inclusion of this document in the administrative record.

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11.10	HTB	11/09/09	<p>Many of the Cities that May Oppose Incorporation of this TMDL Have Received Millions of Dollars of Federal Stimulus Money from the State to Reduce Trash in the Los Angeles River.</p> <p>The Regional Board should not be dissuaded by these cities' arguments about cost or feasibility when these cities have acknowledged feasibility in their grant request to the State Board and have accepted taxpayer funds to address the problem specifically in the Los Angeles River Watershed.</p>	Comment noted.
11.11	HTB	11/09/09	<p>Heal the Bay requests that the information from the Gateway grant request as well as the State Water Board's allocation of funds to those cities be included in the administrative record for this matter. This evidence is relevant to the cities' ability to comply with the TMDL as incorporated into the stormwater permit and to the State Water Board's support for their efforts to comply</p>	<p>Staff will recommend that the following documents be added to the administrative record: Application of the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority (Gateway IRWM Authority) for funding under the Nonpoint Source and Estuary Enhancement SRF Loan Program; State Water Board Clean Water State Revolving Fund Executed Agreements by County – All ARRA and CWSRF Funds since May 20, 2009; and Clean Water State Revolving Fund American Recovery and Reinvestment Act Status Report as of November 6, 2009.</p>
11.12	HTB	11/09/09	<p>The Regional Board Should Modify the Proposed Reopener Language.</p> <p>In general, the Regional Board should streamline the proposed Reopener language in Part 7. The proposed Reopener language includes a detailed discussion of compliance determination and Monitoring and Reporting</p>	<p>It is important and appropriate to include in the permit provisions that detail how compliance with the effluent limitations will be determined, and that establish monitoring and reporting requirements necessary to demonstrate compliance. Such provisions are standard in any</p>

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			Requirements. Reopener at Part 7, 1.B.-C. While this is important information, the Regional Board should describe these elements in a document outside of the L.A. County MS4 or incorporate the information by reference. Instead, the Regional Board should simply include numeric WLAs as effluent limits and required implementation actions and milestones in Part 7. We suggest following the approach taken in the recently adopted Ventura County MS4.	permit. The US EPA in its comment letters dated May 29, 2008 and April 9, 2009 on the Ventura County draft MS4 Permit specifically identified the need to make it clear how compliance with TMDL WLAs will be determined. Staff believes it is helpful to the stakeholders to have a complete understanding of how the TMDL language will be implemented and will reduce ambiguity about compliance determinations if the specificity is contained in the permit.
11.13	HTB	11/09/09	Section 1.B.1.(b).1. It appears that this section allows for final compliance with the use of only partial capture devices. This would obviously not make sense given the definition of a partial (not full) capture device. The Regional Board should clarify this section	Compliance with the final wasteload allocation can not be achieved through the exclusive use of partial capture devices. This has been clarified in the permit provisions Part 7.1.B(1)(b) and Finding No. 57.
11.14	HTB	11/09/09	Section 1.B.1.(a).3 The proposed Reopener appropriately describes that the entire L.A. River system must be addressed for compliance purposes. However, this is only described in the section on "Full Capture Systems". This should be included as an overarching concept for the Reopener	The Los Angeles River Watershed Trash TMDL addresses trash impairments throughout the watershed. Wasteload allocations are assigned to all jurisdictions within the watershed. Compliance with the effluent limitations, therefore, shall be watershed-wide.
11.15	HTB	11/09/09	We strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load	Comment noted.
12.1	LASQP	11/05/09	Explicitly recognize and include the TMDL review / reconsideration step at the sustained 50% reduction mark	See Response to 8.2
12.2	LASQP	11/05/09	Allow for options in demonstrating achievement with Waste Load Allocation (WLA), i.e., "compliance monitoring", including quantification of reductions from full capture, partial capture, institutional controls, and other	The proposed permit provisions allow several options for demonstrating compliance with the effluent limitations derived from the WLAs, including (1) installation and maintenance of

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			equivalents.	certified full capture systems, (2) installation and maintenance of partial capture devices with device-specific performance data from the jurisdictional area, and (3) use of partial capture devices and institutional controls with measurement of trash discharges using (i) DGR or (ii) another scientifically based approach to measurement approved by the Executive Officer. See proposed provisions Part 7.1.B.
12.3	LASQP	11/05/09	LASQP recognizes and appreciates that these have in fact been explicitly incorporated into the proposed Permit revisions.	Comment noted.
13.1	Rutan	11/06/09	Submitted on behalf of the Cities of Arcadia, Carson, Commerce, Downey, Irwindale, Monterey Park, Signal Hill, South Gate and Vernon, and the ad hoc group of cities known as the Coalition for Practical Regulation Object to the limited Administrative Record reflected in the Index of Administrative Record sent October 15, 2009 The Cities respectively request that their comments dated July 27, 2009 along with all exhibits included therewith and all other Comments submitted by interested parties, along with the Record of any Comments provided during the Workshop on July 29, 2009, be made a part of the Administrative Record and be available for the Board's consideration prior to amending the NPDES permit in question. The Index to the Administrative Record should similarly be corrected.	All materials from the Public Workshop held on July 29, 2009 as well as all written comments submitted during the open comment period following the workshop are included in the Administrative Record. The Administrative Record Index includes "[a]ll timely comment letters and evidence received by the Regional Board" (Item 44) and "Staff's Responses to Comments" (Item 45), which includes written comments and supporting exhibits solicited following the public workshop and staff's responses to those comments. All written comments received in response to the public workshop and during the October 8 – November 9 public comment period along with staff's responses to those comments will be included in the board's agenda package for their consideration prior to the board hearing on this matter. A final Administrative Record Index will be prepared after the Board hearing, which will

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				include an itemized list of all comment letters received.
13.2	Rutan	11/06/09	It is inappropriate to revise the NPDES Permit as proposed, and specifically it is inappropriate to "implement the Trash TMDL with numeric effluent limitations" in a municipal separate storm sewer system ("MS4") permit under the present circumstances, for the following reasons:	See Responses below.
13.3	Rutan	11/06/09	Because the Clean Water Act does not require that the subject NPDES Permit include numeric effluent limits, any attempt to include either a numeric effluent limit for purposes of the Trash TMDL, or any other numeric effluent limit for any other TMDL into the NPDES Permit in issue, is an attempt to impose a requirement that clearly goes beyond the requirements of the Clean Water Act.	<p>It is well established that the federal Clean Water Act authorizes imposition of provisions in an MS4 permit that require strict compliance with water quality standards. (See e.g., <i>Defenders of Wildlife v. Browner</i>.) Federal regulations require all NPDES permits to be consistent with the assumptions and requirements of applicable waste load allocations established under section 303(d). The permit provisions are practicable, and therefore well within the federal mandate in Clean Water Act section 402(p) that the Permittees reduce pollutants in storm water to the "maximum" extent practicable.</p> <p>The commenter suggests that the manner of measuring compliance with required trash abatement somehow imposes different costs and burdens upon the Permittees, but that is not the case. Assuming the Permittees intend to comply with the provisions of the TMDL (staff has no reason to believe they do not), the costs and burdens associated with complying with the waste load allocations are the same, irrespective of whether enforcement for noncompliance is</p>

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				<p>triggered by measuring effluent concentrations numerically or by assessing whether the Permittee has actually implemented and is maintaining appropriate BMPs. In either case, the Permittees must rely upon the same suite of structural or non-structural best management practices and institutional controls to stop people from littering, prevent trash that was littered into the streets from getting into the storm drains, and/or capture litter that enters the drains before it is discharged into the receiving waters. The waste load allocations are the same irrespective of the manner of compliance or manner of assessing penalties. The only manner that is not the same is that to enforce this TMDL, the proposal does not rely upon the previous iterative approach to trash abatement, since that approach has not resulted in compliance with water quality standards since the current permit was adopted in 2001, or since 1998 when the Los Angeles River was listed as impaired.</p> <p>In other words, requiring that water quality improvements occur, and holding Permittees responsible to ensure they occur, amid a practicable and feasible time frame (while allowing the Permittees the option to choose a numeric effluent limitation or a BMP based approach) does not render the permit provisions "beyond the requirements of the Clean Water Act."</p>
13.4	Rutan	11/06/09	Therefore all requirements under the California Porter-Cologne Act ("PCA") must be complied with by the	See response to 13.3.

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			Regional Board before such new Permit terms may be imposed.	
13.5	Rutan	11/06/09	Requiring strict compliance with numeric effluent limits for the Trash TMDL, where the WLAs are, in fact, actually unachievable (and where deemed compliant full capture devices show an iterative Best Management Practices ("BMPs") approach is necessary), sets the wrong precedent for the incorporation of other TMDLs that cannot be complied with through iterative MEP-compliant BMPs.	The commenter litigated and lost the claim that the TMDL is not achievable. (See <i>Cities of Arcadia v. SWRCB</i> .) Staff believes that given the present attainability of the wasteload allocations, the continued trash impairments in the Los Angeles River Watershed despite nearly two decades of the iterative approach under the MS4 Permit, and for the reasons set forth in the Fact Sheet, the correct approach for incorporating this TMDL and its WLAs is the manner proposed by staff. However, with regard to other TMDLs, as the State Board said in Order WQ 2009-0008, the question of how to implement TMDLs in MS4 permits is a fact-specific inquiry.
13.6	Rutan	11/06/09	The Cities request that this policy issued by US EPA Headquarters in Washington, DC, be followed, and that because no "findings" have been included with the proposed Permit Amendment in question to support a determination that the Trash TMDL is the "rare case," that the Proposed Amendment not be adopted.	See Findings 45 and 46, and Fact Sheet pages 19-21. See also Response to 8.3. Staff does not believe it necessary or appropriate to adopt findings prejudging how future TMDLs should be incorporated into the MS4 permit. Notably, the only other TMDLs in the LA MS4 permit were not implemented with numeric effluent limitations, but with receiving water limitations.
13.7	Rutan	11/06/09	Any incorporation of a TMDL into the MS4 Permit in question is premature at this time in light of the Orange County Superior Court's recent decision in <i>City of Arcadia v. State Board</i> , OCSC Case No. 06CC02974 (the "Arcadia Case").	The <i>Cities of Arcadia</i> case is currently under appeal and is therefore not final. The plaintiffs' request for a prohibitory injunction was rejected by the Orange County Superior Court. Further, the TMDL has already been litigated, and the commenters' challenge predicated on Water Code section 13241 was rejected. The TMDL deadlines necessitate taking this action at this

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13.8	Rutan	11/06/09	Developing Standards in accordance with law before enforcing them is particularly important in connection with the subject Trash TMDL because not only has the Water Code section 13241/13000 analysis never been conducted vis-à-vis Stormwater for any of the Standards upon which the Trash TMDL is based, it is also clear from the face of the Trash TMDL Report that the TMDL was developed, in part, to protect improperly designated "potential" beneficial uses.	See response to 13.7
13.9	Rutan	11/06/09	All other adopted TMDLs must be reevaluated and readopted before being incorporated in any fashion into the subject NPDES Permit.	See response to 13.7
13.10	Rutan	11/06/09	Incorporation of the Trash TMDL into the subject NPDES Permit is further premature and inappropriate at this time given that all Permittees have already submitted timely applications to renew the existing MS4 NPDES Permit. Rather than modify the existing NPDES Permit to incorporate a single TMDL, the Cities respectfully request that their renewal applications be finally processed, and that any incorporation of the subject TMDL be conducted at such time as the existing NPDES Permit is renewed and after the Arcadia Case decision has become final.	<p>While the expiration date of the permit was December 12, 2006, as provided for in federal and state regulation, the "terms and conditions" of the permit have been 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 often resource constraints prevent the permitting authority from reissuing 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. In its response to the 2006 ROWDs, the Regional Board stated that, "[p]ursuant to 40 CFR 122.6, Order 01-182 shall remain in effect and enforceable until a replacement MS4 Permit is adopted by the Board."</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 authority for the modification.</p>

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				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).
13.11	Rutan	11/06/09	The implication with the new definition of "Drainage" under the Permit that "urban runoff" is not "stormwater," is contrary to the plain language of the federal regulations to the CWA, as well as prior State Board Orders and representations of State and Regional Boards' counsel in the Arcadia Case	Without responding to the commenters' assertions, the definition of the term "drainage" has been removed because the word is not used in the context of the definition. See response to 13.25.
13.12	Rutan	11/06/09	Also contrary to the plain language of the CWA is the statement in the Fact Sheet (p.11-12) that the "maximum extent practicable" ["MEP"] standard under the Clean Water Act only applies to discharges of pollutants "from storm water."	Since section 402(p)(3)(B)(ii) requires that non-storm water discharges into the MS4 be effectively prohibited, the MEP language contained in 402(p)(B)(iii) can only refer to pollutants in storm water. MEP does not apply to section 402(p)(3)(B)(ii).
13.13	Rutan	11/06/09	No Permit modification requiring additional monitoring and reporting requirements may lawfully be adopted at this time until the requirements of Water Code sections 13225 and 13267 have been met.	Monitoring and reporting requirements under this permit are issued pursuant to Water Code section 13383, not 13225 or 13267.
13.14	Rutan	11/06/09	Because the Proposed Amendment requires the Trash TMDL WLAs to be incorporated into the subject NPDES Permit as strict "numeric effluent limits," i.e., requires	Without responding to the commenters' assertions with respect to federal law and unfunded mandates, staff agrees that the

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			incorporation in a manner that is not required by federal law, and because the Proposed Amendment continues to require the Cities to install and maintain trash receptacles at all transit stops within their jurisdictions, such requirements constitute unfunded State mandates which may not be imposed upon the Cities without the State first providing funding in accordance with the requirements of the California Constitution and the implementing Legislation thereunder.	proposed modifications to Part 4 are redundant with the provisions of Part 7. Staff will therefore propose withdrawing the modifications to Part 4, except to clarify that it no longer applies to the Permittees subject to the Los Angeles River Watershed Trash TMDL.
13.15	Rutan	11/06/09	As in part reflected (although not entirely accurately) in the proposed new Findings to the subject Permit, this Trash TMDL has a storied past	The commenters' perspective is noted.
13.16	Rutan	11/06/09	The claim that the Regional Board "is not aware" of other mechanisms to achieve compliance with the WLAs is, of course, not a legitimate "finding" that can rightfully be used to support applying "numeric effluent limitations" to Stormwater discharges, and specifically is not an appropriate finding to support the "rare instance" noted by EPA as to when "numeric effluent limits" may appropriately be applied to Municipal Stormwater dischargers	The quoted language is taken out of context. The quoted language in the finding speaks to the appropriate basis in support of the modifications that given the history of trash impairment in the watershed, staff concludes that alternatives to actual enforceable requirements with firm deadlines for compliance will not result in attainment of water quality standards.
13.17	Rutan	11/06/09	The fact that "actual compliance" with the zero WLA is never referenced anywhere in the Permit Amendment as being achievable (with the Permit Amendment instead providing that compliance with the Permit Amendment is "practicable" because of the availability of deemed full-capture BMPs), confirms that "strictly" complying with the "zero" trash limit is unreasonable and not economically achievable, and that "strict compliance" with the WLAs is only possible through an iterative deemed-compliance BMP approach	See response to 13.5. Notably, Desi Alvarez, speaking on behalf of the Gateway Region Integrated Regional Water Management Joint Powers Authority, testified to the Regional Board during public comments at its November 5, 2009 board meeting, about the member cities' compliance with the Trash TMDL, specifically that "it looks like we will be complete with the project [installation of full capture devices in approximately 11,000 catch basins in 16 cities that drain to the Los Angeles River] by the end

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				<p>of next year, and at that point everybody will be in compliance.” The comment submitted by the commenters’ attorney is therefore contradicted by the testimony of the clients themselves. Deemed compliance is an appropriate regulatory tool, affirmed by the court of appeal in <i>Cities of Arcadia</i>, and was initially adopted in consultation with the City and County of Los Angeles to ensure a safe harbor to compliance. Nevertheless, the Permittees are entitled to comply with the waste load allocations in any lawful manner, and the Regional Board supports their efforts in that regard.</p>
13.18	Rutan	11/06/09	<p>The litigation history described above and the iterative development of the various full-capture devices to be utilized as "deemed" compliance with the TMDL, reinforces the fact that that TMDL is not the "rare case" where numeric effluent limits must be applied to achieve strict compliance with the WLAs, and that the opposite is the case here, i.e., that compliance is only "reasonably achievable" through the use of iterative BMPs.</p>	<p>Staff is unclear why the commenters appear to be arguing against the proposal to allow a variety of compliance options, in favor of an approach that mandates a single specific compliance approach. Staff believes that allowing Permittees to determine which compliance approach or approaches is best to achieve compliance given their particular topography, geography and demographics provides the greatest flexibility to the Permittees to ensure timely compliance with the interim and final waste load allocations while leaving available the opportunity for innovation.</p> <p>EPA’s guidance memorandum, which is not a regulation but is suggestive of approaches, did not specifically address a trash TMDL (or any specific TMDL) and clearly indicates that a case-by-case assessment of the appropriate approach is necessary. Moreover, page 2 of the</p>

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				11/22/02 memorandum states that "[w]hen a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 CFR §§ 124.8, 124.9, and 124.18." Except with respect to those BMPs certified as full capture, staff lacks the evidence to make appropriate findings that other BMPs will result in attainment of the WLAs in any or all circumstances.
13.19	Rutan	11/06/09	The incorporation of the Trash TMDL into the NPDES Permit must now itself still be conducted in accordance with applicable State and federal law, specifically including, but not limited to, the need to develop "reasonably achievable" and "economically" defensible Permit requirements	Without responding to the commenters' assertions with respect to the legal requirements, the evidence in the administrative record demonstrates that the permit requirements are reasonable and economically achievable.
13.20	Rutan	11/06/09	The Proposed Permit Amendment continues to mandate that the Permittees place and maintain such trash receptacles. Accordingly, this provision, along with the requirement to strictly comply with the Trash TMDL's WLAs, may only be required of the Cities where the State has committed appropriate funding to the Cities to comply with these State mandates.	See response to 13.14.
13.21	Rutan	11/06/09	No TMDL Should Be Incorporated Into The NPDES Permit Until The Arcadia Case Has Been Resolved And The Review And Necessary Revisions Of The Water Quality Standards Ordered Therein, Completed	See Response to 13.7
13.22	Rutan	11/06/09	The Term Of The Existing NPDES Permit Expired On December 12, 2006, And The Incorporation Of This Or Any Other TMDL Should Be Addressed In Accordance	See Response to 13.10

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13.23	Rutan	11/06/09	<p>ANY PERMIT TERM INCORPORATING A TMDL MUST BE IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW AND POLICIES.</p> <p>A. Federal And State Policies Provide For The Use Of Best Management Practices ("BMPs") In Lieu Of Numeric Water Quality-Based Effluent Limitations, in Stormwater Permits When Enforcing a TMDL Or Otherwise</p>	See Response to 8.3
13.24	Rutan	11/06/09	Any Attempt To Impose Strict Compliance With WLAs In A Stormwater Permit, Or To Impose Other Requirements That Go Beyond Federal Law Or That Do Not Exist In Federal Law, Require Compliance With Water Code Sections 13241 And 13000	<p>Since the provisions of the permit are in fact 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. Additionally, 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 for floatable materials and solid, suspended and settleable materials contained in the Basin Plan.</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</p>

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				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.
13.25	Rutan	11/06/09	With The Proposed Permit Terms, The Regional Board is Arbitrarily Attempting To Redefine "Stormwater" To Exclude "Urban Runoff"	The commenters seem to suggest without legal authority, that "urban runoff" is a component of the federally defined term "storm water". "Urban runoff" however, is not a federally defined term, and the word "urban" does not appear in the definition of "storm water". By introducing the word "urban", the commenters apparently seek to redefine the federal definition of "storm water", contained in 40 CFR 122.26(b)(13) ["storm water runoff, snow melt runoff, and surface runoff and drainage"], to include runoff and drainage that is not associated with precipitation events but with activities of urban living. Their approach is not supported by legal authority, and is inconsistent with federal regulations which exclude drainage incident of urban living, such as from water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration and pumped ground water, potable water discharges, air conditioning condensate, line flushing, fire fighting, and other such activities, as "non-storm water." 40 CFR 122.26(d)(2)(iv)(B)(1).
13.26	Rutan	11/06/09	Any Additional Monitoring Or Required Investigation Into Water Quality Would Trigger The Need For A Cost-Benefit Analysis Pursuant To Water Code Sections 13225 And	See Response to 13.13.

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			13267.	
13.27	Rutan	11/06/09	Any Added Mandates On The Cities With New Permit Terms That Are Not Mandated By Federal Law, Must Be Funded In Accordance With The California Constitution.	See Response to 13.14. Staff does not believe that any of the 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.
14.1	Tahir	11/09/09	The cities of San Gabriel, San Marino, Duarte, Irwindale, and South El Monte incorporate by reference comments prepared by Richard Montevideo of Rutan and Tucker (see attached) in re: the proposed reopener of the current MS4 permit to admit the trash TMDL for the Los Angeles River.	Comment noted. See Responses to 13.1 – 13.27