August 18, 2014

Mr. Sam Unger
Executive Officer and Members of the Board
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Re: Comments on the Draft Individual Watershed Management Plans and Coordinated Monitoring Plans for the cities of Carson, Compton, Gardena, Irwindale, Lawndale, South El Monte and West Covina

Dear Mr. Unger:

On behalf of Heal the Bay, Los Angeles Waterkeeper and the Natural Resources Defense Council (collectively, "Environmental Groups"), we are writing with regard to the Draft Individual Watershed Management Plans ("WMPs") and Coordinated Integrated Monitoring Plans ("CIMPs") for the cities of Carson, Compton, Gardena, Irwindale, Lawndale, South El Monte and West Covina ("permittees") submitted in accordance with the National Pollutant Discharge Elimination System ("NPDES") Permit for Municipal Separate Storm Sewer System ("MS4") Discharges Within the Los Angeles County Flood Control District, Including the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach, R4-2012-0175, NPDES Permit No. CAS004001 ("2012 Permit"). We combine our comments for the seven permittees, as the submittals are very similar, and are in many aspects identical. Because the permittees have plainly stated their intent not to be comply with WMP and CIMP requirements, they have forfeited their right to be deemed in compliance and are thus immediately required to meet the permit's applicable RWLs and TMDL limits. The Regional Board must reject the submitted draft WMPs immediately and require that permittees meet the requirements otherwise applicable to receiving water limits.

While we submit the following substantive comments on the WMPs and Monitoring Plans submitted by the permittees, Environmental Groups maintain that several provisions of the 2012 Permit fail to meet the requirements of the federal Clean Water Act and California Porter Cologne Act, and are otherwise inconsistent with both state and federal law. Environmental Groups filed a petition[1] to the State Water Resources Control Board ("State Board") which

[1] For a full explanation of how the permit violates the law, see Memorandum of Points and Authorities in Support of Petition of NRDC, Los Angeles Waterkeeper and Heal the Bay for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region,

demonstrates the ways in which the 2012 Permit violates Clean Water Act and Porter Cologne Act requirements. The State Board has yet to make a determination on our petition.

Because of the deficiencies in the submitted draft WMPs, many of which are detailed below, the plans do not ensure that discharges from the permittees' MS4 systems do not cause or contribute to exceedances of Receiving Water Limitations, including applicable water quality standards, or TMDL limitations in the 2012 Permit, and otherwise fail to meet Permit requirements. This letter is not intended as an exhaustive analysis of reasons for the submitted WMPs' failure to meet permit requirements and failure to ensure future compliance with receiving water limitations.

I. Introduction

The 2012 Permit allows for permittees to develop WMPs for compliance with water quality standards by ensuring that discharges from permittees' MS4s:

(i) Achieve applicable water quality-based effluent limitations as discussed in Part VI.E and Attachments L through R pursuant to the corresponding compliance schedules;
(ii) Do not cause or contribute to exceedances of receiving water limitations in Parts V.A and VI.E and Attachments L through R; and
(iii) Do not include non-storm water discharges that are effectively prohibited pursuant to Part III.A. The programs shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable pursuant to Part IV.A.1.

(2012 Permit, at VI.C.1.d.)

The seven WMPs and CIMPs fail to meet or completely ignore the majority of these requirements, as well as additional WMP and CIMP requirements contained in Sections VI.B-Monitoring and Reporting Requirements and VI.C-Watershed Management Programs of the 2012 Permit. Numerous required sections and appendices are completely missing from the submittals, such as water body-pollutant classification or prioritizations, specific parameter monitoring, and structural/non-structural controls necessary to meet water quality standards.

Examples of unmet requirements abound in this group of WMPs. For example, the Reasonable Assurance Analysis ("RAA") is absent entirely from the Carson WMP (Carson WMP, at Section One. p. 21). Further, the submittals are missing map requirements denoting receiving water or outfall monitoring locations, land uses, watershed boundaries, and other features. Under section VI.B-Monitoring and Reporting Program Requirements of the 2012 Permit, permittees submitting a WMP are required to monitor receiving waters, stormwater outfalls, and non-

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in Adopting the Los Angeles County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2012-0175; NPDES Permit No. CAS004001 (Dec, 10, 2012) ("Environmental Groups' Petition"), SWRCB/OCC File No. A-2236(m).

stormwater outfalls. However, the Draft CIMP for Gardena states that "[t]he City will not perform non-stormwater outfall monitoring to determine compliance with TMDLs…" (Gardena CIMP, at Section One. p. 8). Furthermore, Carson's Draft CIMP, erroneously interpreting legal requirements placed on the City, states that "[t]he City cannot participate in any receiving water monitoring or action outside of its MS4…[t]he City's responsibility for monitoring ends at the discharge from the outfall before it reaches the receiving water." (Carson CIMP, at Section One. p. 5).

In this regard, the WMP submittals read more as legal comment letters or petitions on regulatory action than as plans to meet the objectives of watershed management planning as outlined above. (*See, e.g.*, Gardena CIMP, at Section One. p. 5 ("As the City's administrative petition effectively argues, the receiving water is not part of the MS4.")). In fact, the submittals even concede that the WMPs are not implementation plans, but rather "plan[s] to develop a plan." (*See,* e.g., Gardena WMP, at Section One. p. 2; Carson WMP, at Section One. p. 2.) The cities seemingly shrug at both the process and their own submittals, claiming that "SWMP/I-WMP [WMPs] submitted may be [a] 'hit or miss' proposition that could result in its rejection simply because it did not guess right." (*See*, e.g., Carson WMP, at Section One. p. 3; Gardena WMP, at Section One. p. 3.)

Based upon our review and analysis of the WMPs and CIMPs for the cities of Carson, Compton, Gardena, Irwindale, Lawndale, South El Monte and West Covina, which we describe below in more detail, the Regional Board must fully reject all seven of the WMP and CIMP submittals from these permittees and require immediate compliance with Section VI.D-Stormwater Management Program Minimum Control Measures, with receiving water limitations pursuant to Part V.A., and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).[2] By all appearances these permittees have not met, and do not intend to meet, the watershed management program requirements of the 2012 Permit. Thus, the permittees may not receive additional time to modify these completely insufficient drafts. To grant the permittees additional time would undermine the entire watershed management planning process as envisioned by the 2012 Permit, and would further delay efforts to address serious and persistent pollution in the region.

Our comments on key sections of the WMPs and CIMPs are presented below, and demonstrate the permittees' complete failure to comply with the 2012 Permit's requirements.

[2] Permittees that do not have an approved WMP within 28 months of the effective date of this Order, "shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3). (2012 Permit at VI.C.4.e.).

II. Watershed Management Programs

Under the requirements of the 2012 Permit, an adequate watershed management program must contain several essential components in an effort to achieve water quality standards within each Watershed Management Area ("WMA"):

(i) Identification of Water Quality Priorities
(ii) Watershed Control Measures
(iii) Reasonable Assurance Analysis
(iv) Compliance Schedule

(2012 Permit, at VI.C.5.b.iv.)

At a minimum, permittees must achieve applicable water quality-based effluent limitations and/or receiving water limitations established pursuant to TMDLs, as set forth in Part VI.E and Attachments L through R of the 2012 Permit" (2012 Permit, at VI.C.5.a). Further, the 2012 Permit requires all new development and redevelopment projects to implement stormwater and non-stormwater control measures (*e.g.* low impact development ("LID"), hydromodification controls, and buffer zones) to decrease water quality impacts from development. (2012 Permit, at VI.D.7)

The 2012 Permit requires that each WMP "*shall* be consistent" with the requirements enumerated in the 2012 Permit. (Emphasis added) (2012 Permit, at VI.C.1.f.) As discussed below, the WMPs fall far short of meeting these requirements in many respects.

a. Identification of Water Quality Priorities

The draft WMPs do not meet the 2012 Permit's requirements for identifying water quality priorities. As submitted, the WMPs fail to include required water body-pollutant classifications, source assessments, or prioritization. Without the required analysis, the draft WMPs represent little more than a rehash of earlier ineffective submittals under the Stormwater Management Program Plan required by the previous 2001 NPDES Permit for Municipal Stormwater and Urban Runoff Discharges within the County of Los Angeles and the Incorporated Cities therein, Except the City of Long Beach ("2001 Permit.")

For permittees to identify water quality priorities, the 2012 Permit requires examination of known and suspected stormwater and non-stormwater pollutant sources. (2012 Permit, at VI.C.5.a.iii.) Although the 2012 Permit gives several examples of available data (*e.g.*, TMDL source identification, watershed model results, IC/IC programs (*see* 2012 Permit, at VI.C.5.a.iii.)), these datasets were not discussed in the WMP analyses. Statewide Stormwater Ambient Monitoring Program ("SWAMP") data collected from the past 10 years is the only dataset specifically mentioned. (*See, e.g.* Carson WMP, at Section One. p. 6; Compton WMP, at Section One. p. 6.) In the case of Carson, the last SWAMP data point identified was from 2005.

(Carson WMP, at Section One. p. 6) The submitted WMPs include no discussion of why they did not include a more comprehensive data review and analysis. This approach is inadequate and fails to follow the 2012 Permit's requirements.

The 2012 Permit also requires that the permittees use the findings of the pollutant source assessment to prioritize watershed control measures. This prioritization did not occur and was not discussed in the draft WMPs. The draft WMPs mention TMDLs in associated watersheds, but in general, fail to address other 303(d) List impairments, receiving water limitation exceedances, or other basin plan objectives as required by the 2012 Permit.

b. Watershed Control Measures

The draft WMPs also fail to include the required discussion of watershed control measures. The 2012 Permit requires permittees to address non-stormwater discharges, RWLs, and TMDLs through new or revised structural or non-structural controls. Additionally, the 2012 Permit requires specific structural and non-structural control measures to be included in WMPs:

(a) Identification of specific structural controls and non-structural best management practices, operational source control and pollution prevention, and any other actions or programs to achieve all water quality-based effluent limitations and receiving water limitations contained in this Part VI.E and Attachments L through R to which the Permittee(s) is subject;
(b) For each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation;
(c) For any pollution prevention measures, the nature, scope, and timing of implementation;
(d) For each structural control and non-structural best management practice, interim milestones and dates for achievement to ensure that TMDL compliance deadlines will be met; and
(e) The plan shall clearly identify the responsibilities of each participating Permittee for implementation of watershed control measures.

(2012 Permit, at VI.C.5.b.iv.(4))

WMPs must include all required elements under the 2012 Permit. (2012 Permit, at VI.C.). The watershed control approach taken by the permittees does not follow the 2012 Permit requirements. In fact, only one of the required control measures is proposed: Minimum Control Measures ("MCMs"). The WMPs are thus in violation of the Permit.

i. Minimum Control Measures

The draft WMPs fail to discuss the MCMs in sufficient detail. Most notably, the WMPs do not discuss how the implementation of watershed control measures will achieve receiving water limitations and/or TMDL waste load allocations. The WMPs discuss planned MCMs only in a

limited way, and they primarily consist of programs or practices to meet 2001 MS4 Permit requirements, not the 2012 Permit. There is no discussion of how, or if, the MCMs will be updated and implemented. Further, the WMPs fail to discuss the effectiveness of these control measures over the past 10 years or of modifications from the previous permit cycle. Nor is any evidence or analysis presented to show whether these MCMs have been successful at reducing pollutant loading within the relevant watersheds. It is similarly unclear whether cities have been documenting the successes and failures of already implemented MCMs. The programs' effectiveness should be discussed in detail in the WMPs, as this information is necessary for evaluating WMPs over time. In addition, the WMPs reference many appendices, which are not included in the submittals; their absence renders the WMPs effectively impossible to review. Lastly, the WMPs fail to include timelines for when specific watershed control measures will or would be implemented.

c. Reasonable Assurance Analysis

None of the seven WMPs meet the Reasonable Assurance Analysis ("RAA") objective or the requirements of the Regional Board guidance document. The objective of the RAA is to "demonstrate the ability of Watershed Management Programs [WMPS] and EWMPs to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations." (2012 Permit, at VI.C.5.b.iv.(5)) As this objective requires significant technical rigor, the Regional Board developed a guidance document for the RAA with the input of the Permit's Technical Advisory Group.[3] The WMPs fail to meet these requirements. In fact, the Carson WMP fails to include an RAA at all. Several RAAs also conclude that water quality standards and TMDLs in the affected watershed will not be met. (*See, e.g.*, Gardena WMP, at Section One. Appendix B. p. 9 ("the City [expects] to meet all of the TMDLs to which it is subject, with the exception of metals.")). These admissions further require the Regional Board to reject the submitted WMPs and require immediate compliance with RWLs and WQBELs.

The 2012 Permit states that an RAA "shall commence with assembly of all available, relevant subwatershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis." (2012 Permit, at VI.C.5.b.iv.(5)). However, the WMPs do not identify or provide any of the data or assumptions that were used in the modeling process to determine loading or pollutant reduction. Despite WMP statements that the "LSPC [Loading Simulation Program in C++] has been robustly evaluated and calibrated with local land use, weather, and soils data," (Gardena WMP,

[3] Los Angeles Regional Water Quality Control Board. Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, Including an Enhanced Watershed Management Program. March 25, 2014. Accessed August 2014. http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/watershed_management/docs/RevisedRAAModelingCriteriaFinal-withAtts.pdf

at Section One. Appendix B. p. 2), no data, citations, or references are supplied to support this statement. Moreover, historic information should have been factored into the model when projecting future reductions, but is lacking in the WMPs. The lack of past data calls into question the ability to populate, calibrate, and validate the model for site-specific watersheds. Without the information on the default data values used to generate pollutant loading simulations, it is difficult to determine whether the model was actually calibrated effectively and whether its output appears valid.

Further, the few modeling assumptions described in the WMPs are unsupported. For example, the WMP for Compton states that "since there are no major changes in the profile of the urban area in the sub-basins within the city's area, it is considered that the area is homogenous and it is assumed that Compton has the same characteristics as the larger sub-watershed area that contains the city boundaries." (*See*, e.g., Compton WMP, at Section One. Appendix B. Section 3. p. 6;). Yet no land-use data categorized by outlet is provided to validate this statement. Without such data, a comparison across drainage areas within the City of Compton, much less to the greater sub-drainage area, is impossible. To this end, the above statement cannot be substantiated. Since slight variations in land-uses types, densities, and configurations can lead to large variations in pollutant loading, and thus decisions about monitoring locations and BMP selection, it is vitally important that data are collected from all sub drainage areas to confirm or deny the permittees' arguments.

Several WMPs indicate a belief that modeling shows compliance. (*See*, e.g., Gardena WMP, at Section One. Appendix B. Pg. 5 ("…long term simulations estimated that the City of Gardena is predicted to comply at all times with interim wasteload allocations.")). However, there is insufficient substantiation for these statements. The RAA sections include a table titled "Individual Watershed Implementation Plan Summary and Metrics." This table lists only general descriptions of MCMs, which should already be in place in compliance with the previous 2001 Permit, and then provides an "expected reduction in pollutant load from baseline." (Gardena WMP, at Section One. Appendix B. p. 7). These reduction values appear to be arbitrary and fail to demonstrate that anything new is being implemented to ensure reductions from the baseline. LSPC appears to be the only model utilized in the RAAs, which is problematic because it is a watershed model that does not model BMPs and their contribution to reducing pollutant loads. There are no projects described or timeline stated for when compliance will be achieved – a complete failure to meet the 2012 Permit's requirements for WMP development. Problematically, the WMPs also do not provide any adaptive management plans to be implemented in the event that pollutant reduction objectives are not met.

In addition, the RAAs rely heavily on a number of programmatic and policy mechanisms to achieve compliance without any data or evaluative metrics from past practices or timeframes for implementation of future actions. For example, the City of Compton WMP relies on a city-wide "plastic bag ban," which it claims will achieve 100% reduction of anthropogenic trash, as if plastic bags were Compton's only source of anthropogenic waste. Without an identified regulatory mandate, time-frame for adoption, or analysis to demonstrate anticipated pollutant load reduction, this proposition is not based in reality. Another questionable finding for both the

cities of Compton and Irwindale is a claimed reduction in pollutant load from baseline as a result of "product substitution to eliminate pollutant," which heavily relies on changing manufacturing practices or product substitution to achieve a 25% reduction in metals, a 25% reduction in pesticides, and an 80% reduction in PCBs. (Compton WMP, at Section One. Appendix B-RAA. p. 19; Irwindale WMP, at Section One. Appendix B-RAA. p. 20). The staggering percentage reductions are entirely unsubstantiated and seemingly rely on others, namely the State, to achieve compliance. This is an inappropriate assumption.

d. Land Use Requirements

The WMPs' implementation of LID measures is inadequate to meet the requirements of the 2012 Permit. Under the 2012 Permit, permittees are instructed to "properly select, design and maintain LID and Hydromodification Control BMPs to address pollutants that are likely to be generated, reduce changes to pre-development hydrology, assure long-term function, and avoid the breeding of vectors" and to employ "Low Impact Development (LID) design principles to mimic predevelopment hydrology through infiltration, evapotranspiration and rainfall harvest and use". (2012 Permit, at 7.a(3) p. 95.)

The WMPs state that "[t]ypically, LID controls shall be designed to meet the 85th percentile infiltration requirement (SUSMP Appendix)." (*See*, e.g., Gardena WMP, at Section Two. p. 13; Carson WMP, at Section Two. p. 13; Irwindale WMP, at Section Two. p. 13.) However, the proposals provided in Carson's, Irwindale's, and Compton's SUSMP Appendices do not meet the 2012 Permit's requirements for the 85th percentile storm. There is no specific discussion of the required numeric design criteria, just reference to the Los Angeles County LID Manual. Also, the WMPs discuss the implementation of LID and vegetated control measures since 2006, but do not provide any context for program implementation, successes, extent of implementation, effectiveness, or why it required an 8-year process to adopt an ordinance codifying the approach. The absence of any discussion, data analysis, or lessons learned from these programs (SUSMP or LID), calls into question if and how these programs have actually been implemented.

i. <u>Hydromodification</u>

The 2012 Permit specifically requires permittees to develop requirements for new development and redevelopment to "implement hydrologic control measures, to prevent accelerated downstream erosion and to protect stream habitat in natural drainage systems. . . . to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration," which is to be achieved "by maintaining the project's pre-project storm water runoff flow rates and durations." (2012 Permit, at VI.D.7.c.iv.). The 2012 Permit also requires natural drainage systems to implement hydrological control measure to prevent accelerated downstream erosions and to protect stream habitat in natural drainage systems. (2012 Permit, at Section VI.D.7.c.iv.). Although the cities acknowledge flow concerns, they do not appear to make meaningful efforts towards reducing flow volumes. "[H]ydromodification or variations in flow present a greater risks to stream biological health than do contaminants." (South El Monte

WMP.at Section One. Attachment A-RAA. p. 18; Compton WMP, at Section One, Attachment A-RAA. p. 15). Further, for determining baseline conditions, several of the cities incorrectly categorize sections of the Dominguez Channel, Rio Hondo, San Gabriel River and Compton Creek as "concretized flood control channel[s]." (*See*, *e.g.*, Lawndale WMP, at Section Two. p. 12.) For example, one such labeled channel, in Lawndale the Dominguez Channel below Vermont Avenue, is actually an unlined, earthen-bottom waterbody. And in Compton, Compton Creek is an unlined, earthen-bottom waterbody below Greenleaf Ave. As such, many of these waterways have a number of existing and intermittent designated biological beneficial uses that must be considered.

e. <u>Multi-benefit solutions</u>

While not an explicit requirement for WMPs, the 2012 Permit places substantial emphasis on identifying, developing, and implementing green infrastructure or other multi-benefit projects that will provide additional benefits or resources for the Los Angeles region. For example, under the 2012 Permit's MCM requirements, development and redevelopment projects may "utilize alternative compliance measures to replenish ground water at an offsite location," provided that, among other parameters, "ground water can be used for beneficial purposes at the offsite location." (2012 Permit, at VI.D.7.c ii. (3)). Similarly, "Permittees may propose, in their Watershed Management Program or Enhanced Watershed Management Program ("EWMP"), regional projects to replenish regional ground water supplies at offsite locations, provided the groundwater supply has a designated beneficial use in the Basin Plan." (2012 Permit, at VI.D.7.c iii.(3)). Further, permittees developing an EWMP are tasked with "comprehensively evaluat[ing] opportunities, within the participating permittees' collective jurisdictional area . . . for collaboration among permittees and other partners on multi-benefit regional projects. . . ." (2012 Permit, at VI.C,g.)

These requirements represent a strong overall trend for stormwater management toward the use of multi-benefit projects and practices, which may include, at both site and regional scales, use of rainwater harvesting or stormwater infiltration, green roofs, rain gardens, street trees, and green streets or increased green space. Generally through retaining stormwater runoff, these practices or types of projects not only reduce all categories of pollutants in stormwater, but can reduce flooding, increase local water supplies (particularly critical for Southern California, given current conditions of drought and over-allocation of existing water sources), reduce energy use, improve air quality, increase property values and beautify cityscapes.[4] The implementation of multi-benefit projects can also often help to leverage funding dollars.

[4] American Planning Association (2010). "Rebuilding America: APA National Infrastructure Investment Task Force Report," accessed at http://www.planning.org/policy/infrastructure/pdf/finalreport.pdf; California Department of Water Resources (2010). "California Water Plan Update 2009, Volume 2: Resource Management Strategies, Chapter 19, Urban Runoff Management," accessed at http://www.waterplan.water.ca.gov/cwpu2009/index.cfm; U.S. EPA (2007). Reducing

The proposed WMPs also fail to place emphasis on the use of multi-benefit strategies and the specific additional benefits that could be achieved (*e.g.,* increased water supply), or on the potential for partnerships outside of the MS4 community that could be brokered to increase utility of land area used for stormwater management. This omission represents a significant missed opportunity.

III. Coordinated Monitoring Plans

NPDES permits must contain monitoring provisions sufficient to determine whether a discharger is in compliance with its permit.[5] Further the 2012 Permit outlines five primary objectives of Monitoring Programs:

(i) Assess the chemical, physical, and biological impacts of discharges from the municipal storm water sewer system (MS4) on receiving waters;
(ii) Assess compliance with receiving water limitations and water quality-based effluent limitations (WQBELs) established to implement Total Maximum Daily Load (TMDL) wet weather and dry weather wasteload allocations (WLAs);
(iii) Characterize pollutant loads in MS4 discharges;
(iv) Identify sources of pollutants in MS4 discharges; and
(v) Measure and improve the effectiveness of pollutant controls implemented under this Permit.

As discussed in detail below, the CIMPs submitted by the permittees do not meet the CWA requirements and the primary objectives. They should all therefore be rejected as proposed.

The 2012 Permit's Monitoring Program provides flexibility to allow permittees to coordinate monitoring efforts on a watershed or subwatershed basis to leverage monitoring resources and increase cost-efficiency and effectiveness, as well as to closely align monitoring with TMDL monitoring requirements and WMPs. Although the submittals themselves indicate a coordinated approach to monitoring, there is no evidence within a given submittal that a collaborative approach is occurring. For example, the City of Compton states that a CIMP approach is to be

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Stormwater Costs through Low Impact Development (LID) Strategies and Practices, p. iii, accessed at http://www.epa.gov/owow/NPS/lid/costs07/documents/reducingstormwatercosts.pdf; NRDC Rooftop to Rivers II at http://www.nrdc.org/water/pollution/rooftopsii/files/rooftopstoriversII.pdf; NRDC Green Edge Report at http://www.nrdc.org/water/files/commercial-value-green-infrastructure-IB.pdf; NRDC Stormwater Capture Potential report at http://www.nrdc.org/water/files/ca-water-supply-solutions-stormwater-IB.pdf; and NRDC Green Roofs report at http://www.nrdc.org/water/pollution/files/GreenRoofsReport.pdf.

[5] *See* 33 U.S.C. §§ 1318(a)(A), 1342(a)(2), and 1342(b)(1); 40 C.F.R. §§ 122.44(i)(1), 122.41(j)(1), and 122.48(b); *see also* Cal.Water Code § 13383.5).

applied to consolidate applicable monitoring program requirements. (Compton CIMP, at Section One. p. 3). Yet the City of Compton lists only one partner for this CIMP effort. There is no explanation as to why a number of municipalities in the Los Angeles River-Reach 1 and Compton Creek areas, including the City of Los Angeles, Southgate, Lynwood, Paramount, Long Beach, and the County of Los Angeles, are not included in this "coordinated" effort. Moreover, as detailed below, the permittees' CIMPs fail to meet the minimum requirements for an Integrated Monitoring Program as outlined in the 2012 Permit.

a. Receiving Water Monitoring

Permittees are required to undertake receiving water monitoring at mass emission sites, TMDL compliance points, and additional locations representative of MS4 impacts. (2012 Permit, at Attachment E-MRP. VI) Here, the CIMPs instead repeatedly defer to the State Board and other agencies for all or most receiving water monitoring:

- "The City's receiving water monitoring plan shall be limited to utilizing existing ambient water quality data developed by the Regional Board's Surface Water Ambient Monitoring Program and data generated by other agencies..." (Gardena CIMP, at Section One. p. 4; Carson CIMP, at Section One. p.4).
- "The City cannot participate in any receiving water monitoring activity or action that takes place outside of its MS4." (Gardena CIMP, at Section One. p. 4; Carson CIMP, at Section One. p. 5).
- "Though the SWAMP should be responsible for performing ambient monitoring, it is not known when, if ever, it intends to conduct ambient monitoring in these reaches." (Lawndale CIMP, at Section One. p. 3).

These sentiments are echoed throughout the CIMPs. The permittees assume that others will take responsibility for monitoring, yet there is no evidence provided that either the external monitoring efforts will actually be conducted or that they will be sufficient to provide representative measurements of the impacts to receiving waters of MS4 discharges from runoff in these cities. In addition, the CIMPs do not discuss TMDL monitoring that is required to be incorporated into monitoring plans. Lastly, no maps are included in the submitted CIMPs to identify required features such as receiving waters, MS4 catchments and outfalls, hydrologic units ("HUC 12 units"), land uses, or monitoring locations. The programs flatly fail to meet 2012 Permit requirements by not ensuring that receiving water monitoring will actually be conducted.

b. Outfall Monitoring

The 2012 Permit's Monitoring Program requires one outfall per HUC 12 monitoring unit, as well as outfall monitoring representative of land uses within the jurisdiction. (2012 Permit, at Attachment E-MRP. VIII.2.b.) Yet the submitted CIMPs state that only one outfall per receiving waterbody has been identified for monitoring despite the presence of multiple discharge points. For example, the City of Compton CIMP (Compton CIMP, at Section One. p. 7) states that "The

City has identified one outfall from which discharges are released to Dominguez Channel, eight to Compton Creek, and one to Los Angeles River, Reach 1." The City argues there is "homogeneity of land-use" to justify selecting only a single outfall location to be monitored for each waterbody without providing any analytical or statistical data to validate the claim. As such, this monitoring approach is insufficient.

Secondly, most of the permittees also argue that the lone identified outlet cannot be monitored because of inaccessibility, safety concerns or because a location does not exist. (*See,* e.g., Gardena CIMP, at Section One. p. 7; Carson CIMP, at Section One. Pg. 7). However, there is no information or photo documentation provided for any of the outfalls to validate these claims or establish timeframes when these conditions might actually exist.

In lieu of outfall monitoring, a number of permittees have chosen to sample a "representative field screening point." The cities argue that "the screening points are representative of stormwater discharges from the entire city. The screening points for these sub-watersheds are representative of a mix of residential and commercial areas." (*See*, e.g., Gardena CIMP, at Section One. p. 7; Carson CIMP, at Section One. p. 7; Compton CIMP, at Section One. p. 7.) Yet the CIMPs include no justification to demonstrate that these locations are representative of the land uses across a given jurisdiction. In addition, because no maps were provided in the CIMPs to identify locations of the outfalls, it is impossible to assess whether the proposed locations are indeed representative or whether there are sufficient monitoring locations to represent all land uses in the area. Further, minimum parameters as well as other parameters required in the 2012 Permit Table (2012 Permit Table, E-2 parameters) are not included in the CIMPs as required. (2012 Permit, at Attachment E-MRP. VIII.B.d.).

Finally, with no data provided to validate the land use "homogeneity" assumption in any of the submitted CIMPs, there is no justification for the permittees proposed sampling approach to—"sample three times a year from one of the five field screening points on a rotating basis." (*See*, *e.g.*, Compton CIMP, at Section One. p.8). It is thus an additional violation of permit requirements. It is also inappropriate to rotate the sampling annually amongst a variety of sites, without statistically demonstrating land-use similarity. As such, any data collected using a rotational monitoring approach must be considered site-specific to the outlet—the information gathered from one drain cannot be assumed or used to represent the other drains. In addition, a rotational monitoring approach fails to generate the sample size necessary for any model to be validated. Finally, a rotational monitoring approach fails to adequately address temporal conditions over time for a specific outlet.

In sum, the stormwater outfall monitoring components are insufficient as they fail to include a representative outfall location and ensure monitoring will take place as required by the 2012 Permit.

c. Non-Stormwater Outfall Monitoring

The 2012 Permit's Monitoring Program provisions require non-stormwater outfall based monitoring. (2012 Permit, at Attachment E-MRP. IX.) However, the seven CIMPs ignore this requirement and each states that they "will not perform non-stormwater outfall monitoring to determine compliance with TMDLs, other water quality standards, and actions levels. Such requirements exceed federal stormwater regulations." (*See, e.g.*, Gardena CIMP, at Section One. p. 8; Carson CIMP, at Section One. p. 8). Thus, the CIMPs do not meet the Monitoring Program requirements. The CIMPs propose a limited non-stormwater based outfall screening and monitoring program, which is inadequate. The cities state in their CIMPs that "Visual monitoring shall be performed twice a year during dry periods." (*See*, e.g. Compton CIMP, at Section One. p.9). At a minimum, visual monitoring should occur year-round and during the dry months on a bi-weekly basis—unless historic analysis demonstrates otherwise. In addition, when non-stormwater flow is observed, monitoring should include flow, TSS, nutrients, and bacteria instead of the "narrative description" of constituent sampling proposed in CIMP; numeric monitoring and reporting should be conducted for non-stormwater discharges. Despite the IC/ID program having been part of the MS4 permit for the past 20 years, there are no past evaluative data or information provided to justify a mere annual visual inspection.

d. New Development and Re-Development Tracking

The Monitoring Program requires effectiveness tracking on new development and re-development measures. Projects triggered by the new development and re-development program must include tracking requirements (2012 Permit, at VI.D.7.d.iv; 2012 Permit, at Attachment E-MRP. X.a.). The seven submitted CIMPs refer to a modified "SUSMP evaluation" but this document is not provided, nor is there discussion of how this would satisfy the specific requirements of the Monitoring Program.

e. Adaptive Management

The 2012 Permit requires permittees in each WMA to implement adaptive management procedures, every two years from the date of program approval, to adjust WMPs in order to improve program efficiency. (2012 Permit, at VI.C.8; 2012 Permit, at Attachment E-MRP. XVIII.A.6) The CIMPs include no discussion of the adaptive management process or if and how it will be undertaken.

f. Toxicity

The 2012 Permit establishes requirements for toxicity testing. (2012 Permit, Attachment E, Section XII.) The CIMPs briefly discuss toxicity monitoring/testing protocols; however, there is no indication that toxicity testing will actually be conducted. The CIMPs state that receiving water toxicity monitoring will not be conducted, and there is no discussion of outfall monitoring locations or frequencies. The CIMPs also appear to confuse aquatic toxicity monitoring and monitoring of toxic constituents: "the City intends to perform outfall monitoring for toxics,

Pesticides (PCBs and DDT) and metals (copper, lead, zinc, and selenium) at the outfalls." (*See*, e.g. Compton CIMP, at Section One. p. 12; Carson CIMP, at Section One. p. 12; Gardena CIMP, at Section One. Pg. 12). This proposal does not include aquatic toxicity testing, nor do the proposed protocols follow 2012 Permit requirements.

g. Special Studies

The Monitoring Program requires regional studies and special studies to better characterize the impact of the MS4 discharges on the beneficial uses of the receiving waters. (2012 Permit, at Attachment E-MRP. XIII). However, the seven CIMPs ignore this requirement and explicitly refuse to conduct the studies, stating that "the City has taken the position that it is not responsible for [regional and special studies]." (*See*, *e.g.*, Gardena CIMP, at Section One. p. 12; Compton CIMP, at Section One. p. 12; Carson CIMP, at Section One. p. 12). This omission is a clear violation of the 2012 Permit.

IV. Conclusion

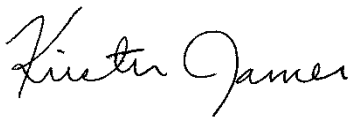
Based upon our review and analysis of the WMPs and CIMPs for the cities of Carson, Compton, Gardena, Irwindale, Lawndale, South El Monte and West Covina, the Regional Board must reject all seven of the WMP and CIMP submittals from these permittees. The Regional Board must also require immediate compliance with baseline requirements in Part VI.D, with receiving water limitations pursuant to Part V.A., and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).[6] Further, given the permittees' stated positions on their unwillingness to comply with even basic 2012 Permit requirements for WMPs, the Regional Board must not provide any additional time to the permittees to modify their completely insufficient drafts.

Environmental Groups appreciate this opportunity to comment on documents submitted under the 2012 LA MS4 Permit. Please feel free to contact us with any questions or concerns you may have.

[6] Permittees that do not have an approved WMP within 28 months of the effective date of this Order, "shall be subject to the baseline requirements in Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A. and with applicable interim water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3). (2012 Permit at VI.C.4.e.).

Sincerely,

Johanna Dyer
Staff Attorney
Natural Resources Defense Council



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