

# STANDARD URBAN STORM WATER MITIGATION PLANS

## SUMMARY OF COMMENTS RECEIVED AND RESPONSE

The comments received on the Standard Urban Storm Water Mitigation Plans (SUSMPs) and Regional Board staff response is divided into two sections. The first sections, lists main issues and staff response in detail. The second section summarizes all significant comments received by the Board on SUSMP before December 6, 1999, and the staff response including any actions taken to address the comment.

### A. MAIN ISSUES AND RESPONSE

1. **Comment:**The Regional Board lacks regulatory discretion to establish a numerical mitigation measure for storm water treatment.

**Response:** The municipal storm water permit for Los Angeles County and Cities requires that SUSMPs achieve specific objectives which include to (i) minimize adverse impacts to natural communities; (ii) maximize infiltration to the extent practicable; (iii) minimize parking lot pollution; (iv) provide for appropriate controls to reduce storm water pollutant loads.<sup>1</sup> Staff interprets this provision of the permit, underlying federal law, and the statutory standard of Maximum Extent Practicable (MEP) as requiring SUSMPs to incorporate numerical mitigation measures for development planning projects in order to achieve compliance with water quality standards. Without a numerical mitigation measure, developers will select no treatment BMPs because there will be no BMP sizing guideline. Board Resolution No. 99-03 which states that "The Permittees shall select and require implementation of the most effective BMPs,...." will then be without effect.<sup>2</sup>

The 1987 Clean Water Act amendments give USEPA and States considerable discretion on establishing provisions for implementation in storm water programs.<sup>3</sup> Further, interim USEPA policy guidelines on BMPs for storm water programs explains that the permitting authority can require more specific conditions or limitations to meet water quality

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<sup>1</sup> Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles (Board Order No. 96-054; NPDES No. CAS614001). Part 2. III.A.2)

<sup>2</sup> The Regional Board adopted Resolution No. 99-03 approving BMPs for Development Planning and Development Construction on April 22, 1999.

<sup>3</sup> 33 U.S.C. Section 1342(p)(B)(iii). "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of pollutants."

standards where adequate information exists.<sup>4</sup> In addition, courts accord administrative agencies a high degree of deference in the areas of law they regulate.<sup>5</sup>

2. **Comment:** Anti-degradation policy prohibits new construction when water quality is already impaired.

**Response:** The municipal storm water permit in agreement with federal storm water regulations requires controls on new development to reduce storm water pollution. There is no prohibition on new construction.

3. **Comment:** The numerical mitigation criteria mandates the capture of storm water which will require expensive land acquisition cost.

**Response:** The numerical mitigation measure defines the definite volume of storm water that must be treated for water quality benefits. Treatment is the application of any physical, biological, or chemical method that can be used to remove pollutants in storm water. Providing storage volume for the runoff or capture is one form of treatment. It is not mandatory and other options may be considered such as reducing impervious cover and promoting infiltration.

4. **Comment:** The proposed numerical mitigation measure is not based on science and is an arbitrarily agreed to number in settlement of a lawsuit.

**Response:** The proposed numerical measures are technically defensible. The measures are based on the principle that most rainfall events are in the smaller range and higher rainfall runoff producing events are less frequent. Designing storm water treatment controls for the smaller events will reduce storm water pollutant loads significantly while optimizing BMP costs. The primary numerical method to determine BMP design criteria is the maximized water quality treatment volume method recommended by the American Society of Civil Engineers (ASCE). The 0.75-inch rainfall event method happens to be also the one that was agreed to in a lawsuit settlement agreement between the NRDC and the County of Los Angeles. The four methods proposed as choices are equivalent variants and in a technical comparison were in agreement to within 10% of one another. It is highly probable that parties that settle a litigation select a numerical criterion that is reasonable and factual.

5. **Comment:** The numerical mitigation measure will require implementation of BMPs that have not been proven to be effective in the region.

**Response:** The proposed numerical mitigation measure defines the quantity of storm water (volume) that has to be treated to remove pollutants. This criterion does not in anyway describe the effectiveness of BMPs to be used. The effectiveness of any particular BMP is dependent on design parameters and the range for its applications. Physical geography has little influence on the effectiveness of BMPs while proper

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<sup>4</sup> 61 Fed. Register 43761. "The interim permitting approach uses best management practices in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate."

<sup>5</sup> See, e.g., *Chevron U.S.A. v. Natural Res. Def. Council*, (1984) 467 U.S. 837

maintenance is a big factor. Information on BMP effectiveness can be found in research reports and national BMP databases. The numerical mitigation measure in combination with the effectiveness of a BMP determines the overall annual load of pollutant that can be removed.

6. **Comment:** The post-construction treatment BMPs will require costly maintenance

**Response:** Treatment BMPs do require proper maintenance and maintenance costs are BMP specific. Poor or non-existent maintenance will result in an ineffective BMP. Information on BMP maintenance costs can be obtained from national databases and reports. See references in the Record of Decision. A cursory review indicates that maintenance costs are reasonable.

7. **Comment:** The Regional Board did not perform an economic analysis required by State and Federal law.

**Response:** The implementation of a federal regulation does not require separate economic analysis. A relative quantitative comparison performed with similar criteria for storm water management or flood control, sediment removal from construction, combined animal feedlot operations, and State of Washington water quality criteria indicated that the numerical mitigation criteria would cost about three to ten times less. In addition, staff performed BMP cost calculations for an actual site in Los Angeles in the process of development and determined that the mitigation criteria cost is less than 0.5 percent of the project cost.

8. **Comment:** The Regional Board did not provide adequate public notices to interested parties.

**Response:** Regional Board action was not contemplated at the September Regional Board meeting and thus no public notice was necessary. Nevertheless, Board staff provided a 30-day public notice and mailed a copy to all parties on file. Staff was unable to verify the claim by some that they did not receive copies of the public notice or provide an explanation. Staff will again provide 30 day-notice of the proposed action on the SUSMPs scheduled by the Regional Board for January 6, 2000.

**B. SUMMARY OF ALL SIGNIFICANT COMMENTS AND RESPONSE**

COMMENTER	COMMENT	RESPONSE	ACTION
<u>General</u> City of Los Angeles, Western States Petroleum Association	1. Conduct first a quantitative review of the basis of designation of selected categories as priority-planning projects.	The categories are designated in the permit and were selected based on risk sources data compiled in the first term of permit implementation.	No action necessary
Los Cerritos Channel Task Force	2. Provide level playing field for unincorporated and incorporated cities within LA County	Four methods of determining the mitigation measure are provided to ensure some flexibility. The methods are equivalent. See ROD	Four equivalent methods included as mitigation criteria in SUSMP

COMMENTS	COMMENT	RESPONSE	ACTION
Bellflower, Claremont, Commerce, Covina, Diamond Bar, Downey, Huntington Park, Industry, Irwindale, Lakewood, La Mirada, Lomita, Lynwood, Maywood, Montebello, Paramount, Norwalk, Rancho Palos Verdes, Santa Fe Springs, Whittier	3. No other MS 4 permits in California require numerical criteria for runoff mitigation	All MS4 permits are required to have controls on new development and redevelopment that will reduce pollutants to the MEP. The USEPA has identified the lack of specific criteria as a deficiency in its Report to Congress ON Phase II (1999)	No action necessary
SCAG	4. Provide the opportunity for the development of regional BMPs instead of site by site requirements	May be considered by Board in a Resolution	Will suggest interest to Regional Board
SCAG	5. Make the numerical mitigation measure voluntary pilot program for the first two years.	Federal laws and regulations require that controls on new development and redevelopment be enforceable	No action necessary
Santa Monica	6. More studies not necessary to establish mitigation criteria and evaluate BMPs	We agree that there exists sufficient information to establish numerical mitigation criteria and to design BMP for optimum performance and effectiveness.	No action necessary
Bellflower, Claremont, Commerce, Covina, Diamond Bar, Downey, Huntington Park, Industry, Irwindale, Lakewood, La Mirada, Lomita, Lynwood, Maywood, Montebello, Paramount, Norwalk, Rancho Palos Verdes, Santa Fe Springs, Whittier	7. Numerical mitigation measure is an unfunded mandate	Implementation of a federal permit program is not an unfunded mandate as described in the State constitution. See memo from legal counsel.	No action necessary
Bellflower, Claremont, Commerce, Covina, Diamond Bar, Downey, Huntington Park, Industry, Irwindale, Lakewood, La Mirada, Lomita, Long Beach, Los Angeles, Lynwood, Maywood, Montebello, Paramount, Norwalk, Rancho Palos Verdes, Santa Clarita, Santa Fe Springs, Vernon, Whittier, BIA, EAC, New Hall Land and Farming, Long Beach Chamber of Commerce	8. Numerical mitigation measure is not based on sound science	Disagree. Our review of local data and implementation programs in states such as WA, FL, and MD indicates that the approach to establishing numerical mitigation measure is scientific and reasonable. The methods have also been endorsed by national science and engineering associations.	References to important documents provided in the SUSMP. A bibliography of references reviewed for the action is included in the ROD.
Bellflower, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Huntington Park, Industry, Irwindale, Lakewood, La Mirada, Lomita, Long Beach, Lynwood, Maywood, Montebello, Paramount, Norwalk, Rancho Palos Verdes, Santa Fe Springs, Whittier	9. Treatment controls will be required irrespective of siting factors limiting application.	Site conditions will determine what BMPs are appropriate. A provision for waiver is provided where mitigation may be infeasible. Mitigation banking may be an alternative.	Waiver provision has been included in the SUSMP where impracticability is established.
Covina, Irwindale, La Mirada, Lomita, Norwalk, Whittier	10. Provide sufficient time for Council of Governments to review and comment	Staff will mail and e-mail copies to SCAG for distribution to COGs.	Staff will mail public notice of proposed action to SCAG and COGs.
Cerritos, Diamond Bar	11. Developers will move to build in counties without numerical mitigation measures.	The mitigation measure requirement for new development is based on federal law. Other Regional Boards are likely to develop and evaluate compliance using similar criteria. The USEPA considers the absence of numerical storm water BMP design criteria for new development a deficiency. See USEPA Phase II Final Rule	No action necessary.

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Bellflower, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Huntington Park, Industry, Irwindale, Lakewood, La Mirada, Lomita, , Long Beach, Lynwood, Maywood, Montebello, Paramount Glendora, , Norwalk Rancho Palos Verdes, Santa Fe Springs, Whittier, Truxaw and Associates, Long Beach Chamber of Commerce	12. BMPs will require costly maintenance	Maintenance of BMPs is essential and strategies to support maintenance activities are discussed in USEPA's Phase II Final Rule.	No action necessary.
Azusa, Claremont, EAC	13. Perform cost benefit analysis	The implementation of federal law does not require a separate cost benefit analysis. Relative cost comparisons and BMP cost calculations performed indicate that the cost of the mitigation measure is reasonable for the water quality benefits it will bring.	No action necessary
Centex Homes, Desert Partners, Bill Ehrlich, FORMA, Engineering Contractors Association, Greystone Homes, John Laing Homes, Mid-cities Escrow, JTL, New Hall Land and Farming, New Urban West, Pace Engineering, Pacific bay Homes, Pacific Soils Engineering, David Placek, Psomas, Ramseyer, Rasmussen, Shea Homes, Sikand, Southern California Contractors, Southern California Ready Mix Concrete Assoc., South Place Corp., SunCal Co., Taylors Woodrow., Tetra Tech, Van Tilburg and Associates, Warmington Homes, Western Pacific Housing, LA County Supervisor Knabe,	14. SUSMP is stringent enough without the numerical mitigation measure	Without the numerical mitigation measure the SUSMP does not provide adequate guidance on design criteria for BMPs. Thus no treatment BMPs or BMPs inadequately sized may be selected with no benefit to water quality. The USEPA in the preamble to Phase II Final Rule makes the same observation.	No action necessary.
<u>Technical</u> Heal the Bay, American Oceans Campaign, Friends of the LA River, NRDC, Kudo and Daniels, Fusion Films, Santa Monica BayKeeper, Ballona Wetlands Foundation, AHHA, H & K Interiors, Kinsella & Associates, AKERS Entertainment, Ballesteros, Stenstrom-UCLA, Chatten Broan & Assoc., South Bay SurfRider (13 members), Shatz	15. Establish for all municipalities in LA County the 0.75-inch mitigation measure or similar criteria for development planning currently in effect for the unincorporated areas.	The proposed criteria provide for the treatment of 0.75 inch or equivalent volume of runoff from new development for all areas of LA County within the jurisdiction of the Regional Board.	Criteria is made applicable to all MS4 permittees in LA county
Heal the Bay, American Oceans Campaign, Friends of the LA River,	16. Require SUSMPs for development in environmentally sensitive areas	The requirement is included for the City of Long Beach but was not one of the priority categories specifically identified in the LA County MS4 permit.	This category has been added to the SUSMP.
Heal the Bay, American Oceans Campaign, Friends of the LA River,	17. Require mitigation of runoff from parking lots separately in each SUSMP	This is not one of the priority categories specifically identified in the LA County MS4 permit. Commercial categories specifically included have indicated that they are no different than parking lots. In addition, the Coastal Commission has often consulted the Board for appropriate BMPs and criteria.	This category has been added to the SUSMP.

<b>COMMENTS</b>	<b>COMMENT</b>	<b>RESPONSE</b>	<b>ACTION</b>
NRDC	18. Apply SUSMP requirement broadly rather than limit it to seven categories	A BMP checklist is already required for other priority projects. Expanding the SUSMP requirement may be appropriate once TMDLs have been allocated and other significant sources need to be controlled.	Two categories have been added: locations in environmentally sensitive areas, and parking lots.
County of Ventura and cities	19. Include an alternative method based on volumetric and flow which uses capture of annual runoff and peak flow rate control	An equivalent volumetric method is provided based on annual volume capture. Flow rate controls are left to the judgement of the local agency.	Eight five percent treatment of annual runoff volume is provided as an equivalent mitigation criteria.
Heal the Bay, American Oceans Campaign, Friends of the LA River,	20. Define hillside development and not defer definition to the local municipality	Will provide a general definition.	Defined in SUSMP.
Heal the Bay, American Oceans Campaign, Friends of the LA River,	21. Apply requirements for retail gasoline outlets to any facility with a fuelling dispenser.	This is not one of the priority categories specifically identified in the LA County MS4 permit. Expansion of the applicability may be appropriate once TMDLs have been allocated and other significant sources need to be controlled.	No action necessary
WSPA, San Gabriel Basin Water Quality Authority	22. Requirement for infiltration will promote pathways for groundwater and soil contamination	Risks for ground water contamination exist under certain situations. These are identified in a report by the USEPA (1993). Pre-treatment of storm water will reduce such risks. The soil acts as a natural filter and self regenerates.	A section is included in the SUSMP describing the limitations of infiltration BMPs.
Truxaw and Associates	23. Promote non structural BMPs	SUSMPs already require source control BMPs in addition to structural BMPs and treatment control BMPs	No action necessary.
Land Tech Engineering	24. Provide design specifications for BMPs based on criteria	Expect that BMP design specification will be developed by the municipalities based on the numerical mitigation measure. Interim BMP design information may be obtained from manuals developed by other states.	No action necessary.
Centex Homes, Engineering Contractors Assoc., John Laing Homes, Land Tech Engineering, Pace Engineering, Pacific Soils Engineering, David Placek, Ramseyer, Rasmusen, Sikand, Southern California Contractors, Southern California Ready Mix Concrete Assoc., Tetra Tech, South Place Corp., Taylor Woodrow, Western Pacific Housing, LA New Car Dealers Ass.	25. Staff proposal requires capture which is not the same as infiltration or treatment	Storm water capture is not mandatory. The proposal only requires that a certain quantity of storm water be treated with BMPs to remove pollutants in one of several ways.	No action necessary.
Vernon, Los Angeles	26. Require similar criteria for USEPA Phase I industrial facilities	The requirements are for new development in selected categories. Expansion to other categories may be considered for the next permit term. Will recommend application to construction permits in the LA Region covered by the State General Storm Water permit for construction activity.	Will propose to the Board to consider in its Resolution that the same
Brash,	27. Filter media is not an effective BMP	Disagree. Filter media are effective BMPs if properly configured. See letter to Brash from RB Executive Officer date Oct. 19, 1999.	No action necessary.

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Santa Clarita	28. Provide criteria for flow based controls in addition to volumetric based controls	Flow based controls which are essential to maintain BMP effectiveness, reduce flow velocities, minimize downstream erosion potential, and prevent over bank flooding are left to the judgement of the local agency.	A statement has been included in the SUSMP that flow design criteria be determined by the local agency.
Santa Clarita	29. Limit application of criteria to impervious surfaces	The criterion is applied to the whole area. Credit for the pervious areas is automatically considered through the runoff coefficient. Roofing areas have been excluded for commercial facilities.	No action necessary.
Santa Clarita, EAC	30. Provide greater flexibility in application of the mitigation criteria	The four methods of selecting the numerical mitigation through criteria and waiver procedures offer sufficient flexibility in application	Provide in the SUSMP four equivalent methods of determining the numerical mitigation measure.
Los Angeles	31. The numerical mitigation measure should be a guidelines and not a requirement for land development	Federal laws and regulations require that controls on new development and redevelopment be enforceable.	No action necessary.
<u>Legal</u> Los Angeles	32. Setting a numerical mitigation measure is a discretionary action. Provide cost estimates of impacts and benefits and release documentation for public comment and review under CEQA.	The requirements under an NPDES permit are exempt from review under CEQA. Preliminary costing estimates indicate that they are reasonable.	No action necessary.
Los Angeles	33. Identify the regulatory authority, which authorizes the Regional Board to establish the numerical mitigation measure.	Regulatory requirement is found at 40 CFR 122.26 (d)(2)(iv)(A) (2). Statutory authority is at 33 USC 342(p)(B)(iii). See also court's opinion in <u>Defenders of Wildlife v. Browner</u> (No. 98-71080) (9 <sup>th</sup> Cir. 1999) and in <u>NRDC v. USEPA</u> 966 F2d. 1292 (9 <sup>th</sup> Cir. 1992)	No action necessary.
Los Angeles	34. Setting a numerical mitigation measure is a discretionary action. Provide cost estimates of impacts and benefits and release documentation for public comment and review under CEQA.	The requirements under an NPDES permit are exempt from review under CEQA. Preliminary costing estimates indicate that they are reasonable.	No action necessary.
Western States Petroleum Association (WSPA)	35. Postpone consideration because of inadequate notice.	A thirty-day notice on this action has been provided. A thirty-day notice on the September 1999 Board meeting was provided even though it was not required for a Regional Board Information item.	No action necessary.
Apartment Association, BIA	36. There is no regulatory requirement that there be a numerical measure	Disagree. See detailed explanation under main issues and response.	No action necessary.
NRDC	37. Receiving water limits and anti-degradation policies apply independently from mitigation criteria.	Agree that mitigation standards are separate from the numerical mitigation measure. The Office of Chief Counsel confirms that MS4 programs must meet water quality standards in a memo dated October 14, 1999	No action necessary.
Burke, Williams & Sorenson	38. Provide broad legal authority for the SUSMP requirement	We will include legal citations that are relevant to the jurisdiction of the Regional Board.	Relevant laws are cited in the SUSMP to provide legal justification.
Burke, Williams & Sorenson	39. Delay SUSMP requirements in light of PL 106-74 requiring USEPA to submit reports to Congress.	The USEPA has already submitted the reports to Congress and thus no delay is warranted.	No action necessary.

<b>COMMENTS</b>	<b>COMMENT</b>	<b>RESPONSE</b>	<b>ACTION</b>	
	Santa Monica BayKeeper	40. New development can be prohibited under the Federal Anti-degradation policy if it degrades or adds pollutants to local waters	Disagree. See detailed explanation under main issues and response.	No action necessary.
	EAC, Downey, Lakewood	41. Provide authority in the Clean Water Act to regulate flow to address water quality.	The U.S. Supreme Court has held that regulation of flow to protect beneficial uses is within the authority of the Clean Water Act <u>PUD No. 1 v. WA Dept. of Ecology</u> , 511 U.S. 700 (1994)	No action necessary.