
County of San Diego

Comments of Tentative Order No. R9-2013-0001

April 10-11, 2013

Provision A – Receiving Water Limitations

SDRWQCB Response LGL-1

- Response LGL-1 asserts nothing has changed as a result of *NRDC* Ninth Circuit opinion.
- The reality is that a court has now issued a ruling with the result that, unless compliance with RWL language is linked to the iterative process, copermittees can be sued for RWL violations at any time.
- Tentative Order, as issued, does not support the WQIP iterative process, it undermines it.

Provision A – Receiving Water Limitations SDRWQCB Response LGL-1

- MS4 Permit holders seek what Congress intended – MEP to be achieved over time due to unique challenges of stormwater control.
- Including a prohibition that Ninth Circuit interprets as immediately enforceable at third parties' election is bad policy.
- Response glosses over language of State Board Order WQ 2001-15 endorsing compliance with water quality standards over time.

Provision A – Receiving Water Limitations

SDRWQCB Response LGL-1

SOLUTION

- Remove RWL Language; thereby permitting the iterative process you have created to work – discretion exists under *Browner*, as even acknowledged in State Board Order WQ 2001-15;

Or in the alternative,

- Define Compliance in Concrete Terms in Provision A – Linked to the WQIP and Iterative Process.
- Unless Provision A is directly linked, the WQIP process created and supported by copermittees is impaired.

Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

Reliance on USEPA November 12, 2010 Memorandum is Legally Improper:

- EPA Region 9 affirms the Memo is a basis for supporting incorporating NELs into the Permit.
- Memo Has Still Not Been Reviewed for Propriety by US Office of Management and Budget.
- Regardless, under recent U.S. Court of Appeal decision in *Iowa League of Cities v. EPA No. 11-3412* (8th Cir., March 25, 2013) the Memo constitutes improper rule making and cannot support SDRWQCB's analysis.

Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

- Your responses affirm SDRWQCB's discretion under *Browner* in support of various permit provisions.
- However, your response disavows SDRWQCB's discretion to recognize the flawed scientific basis for Bacteria TMDL provisions and revisit the bacteria WLAs through a Basin Plan amendment process.
- SDRWQCB has absolute discretion under CWA 402 and *Browner* to fix a flawed Bacteria TMDL which, when implemented through this permit, will cost billions with unknown public dollar benefit to clean water efforts.

Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

- State Board Order WQO 2002-15, “In general, the Board agrees that, where a Regional Water Quality Control Board has evidence that a designated use does not exist and likely it cannot be feasibly attained, it is unreasonable to require a discharger to incur control costs to protect that use.” See also, *California Assn. of Sanitation Agencies v. State Water Resources Control Board* 208 Cal.App.4th 1438 (2012)
- This principle of unreasonable costs for an infeasible result should be reviewed in context of Bacteria TMDL.

Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

- Costs of compliance with Bacteria TMDL NELs has been reliably quantified. Range of \$2.8B-\$5.1B.
- The assertion in response to comments that we fail to factor in costs of not implementing TMDL is misplaced.
- Fact Sheet affirms that no reliable study has quantified economic value of TMDL. (F-19)
- To contrary, PLNU Study (April 2011) just released to public shows cost outweighs benefit by 6 to 1 ratio.

Bacteria TMDL Numeric Effluent Limitations SDRWQCB Response LGL-4

SOLUTION

- Do not Incorporate Bacteria TMDL Numeric Effluent Limitations into this Permit.
- Open a process to revisit the Basin Plan Amendment for Bacteria in Beaches/Creeks that is scientifically sound, incorporates recent and nearly completed studies, has positive cost-benefit to taxpayers.

Technical Concerns with the Inclusion of Bacteria TMDL into the San Diego Region MS4 Permit

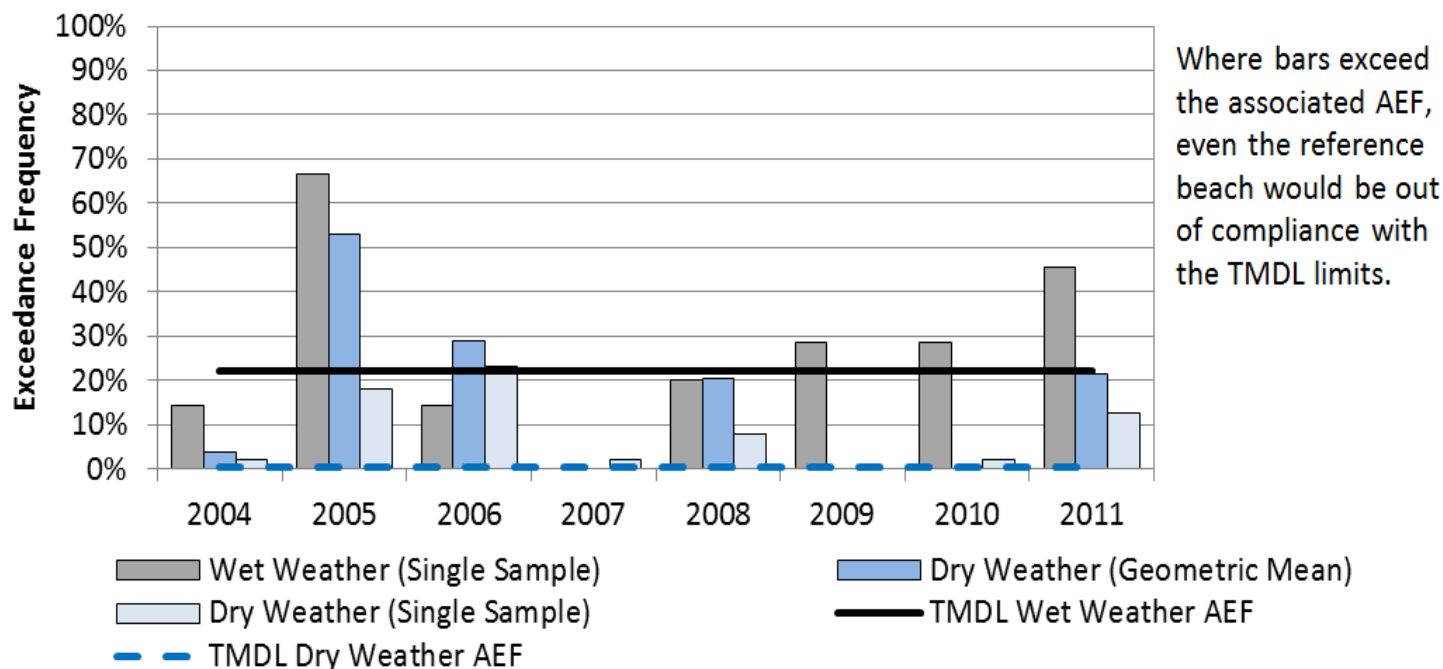
Todd Snyder, County of San Diego

Ken Susilo, PE, D.WRE, CPSWQ, Geosyntec Consultants



Science (Reference Approach)

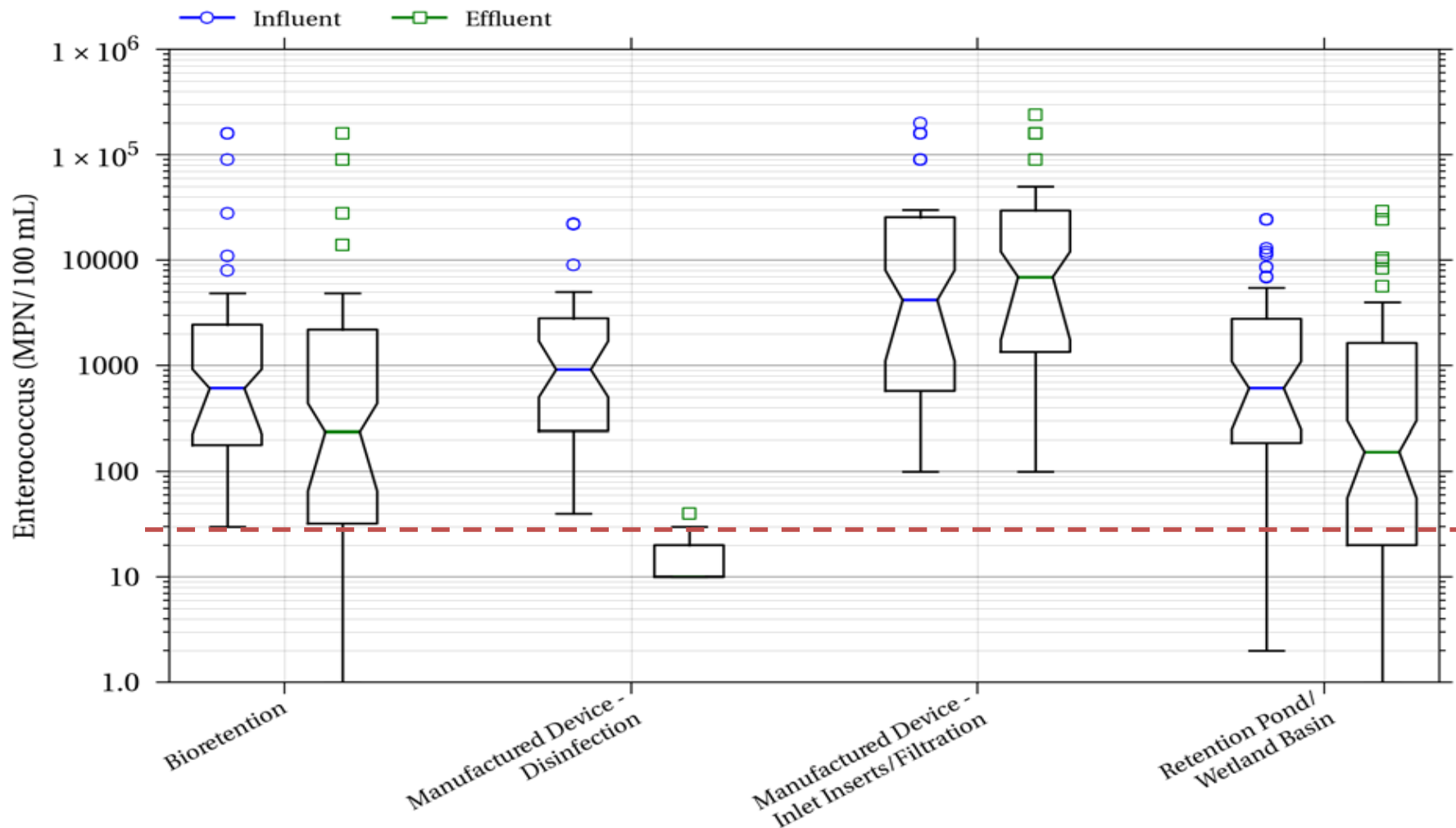
- Reference Watershed Exceeds Wet Weather TMDL Standard about 50% of the Wet Time (Dry over 85%)



Notes:

- 30-day Rolling GM - Geometric mean calculation performed every week, on the dry weather samples within the previous 30-days period, if 5 or more samples have been taken in the 30-day period.

Attainability (BMP Performance vs WQBELs)



Clary, J., B. Steets, J. Jones, E. Strecker, M. Leisenring.

Fecal Indicator Bacteria Reduction in Urban Runoff. October 2012. <www.stormh20.com>.

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Benefit-Cost (Public Health Benefits)

Regional Public Health Cost Estimates from Los Angeles and Orange County (Given et al, 2006)

	Wet Season (Nov-Apr)		Dry Season (May-Oct)	Total
Health Costs ^a	\$1.6M-\$8.5M		\$19.3M -\$40.8	\$20.9-\$49.3
% of Total Cost	8-17%		80-92%	
Days	Wet Season Wet Weather	Wet Season Dry Weather	Dry Season Dry Weather	
Number of Days	40 ^b	141	184	
Adjusted Health Costs	\$360K-\$1,883K	\$20.5M - \$47.4M		
Adjusted Percent of Total Health Cost	2-4%	96-98%		

^a Given, et al., 2006.

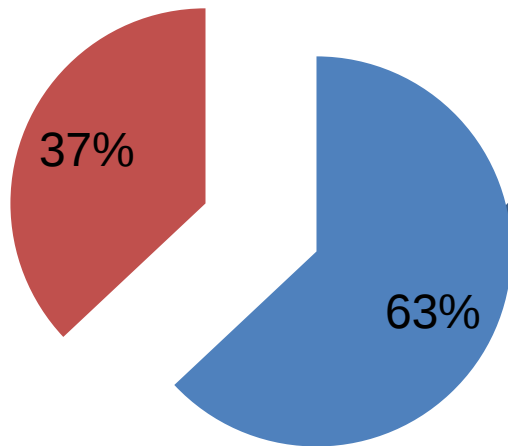
^b Estimate based on six month wet season (181 days). Costs assumed to be proportional to days within season.



Benefit-Cost* (Comparative Public Health Basis)

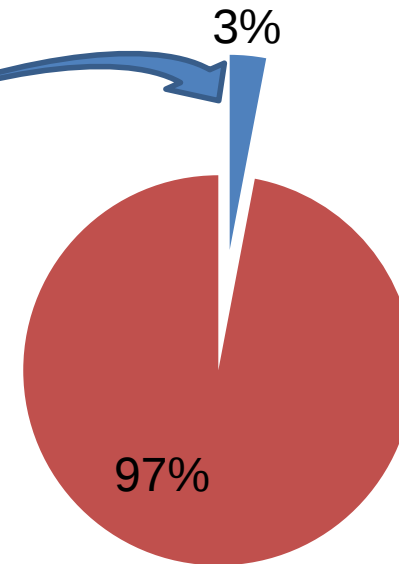
Relative Implementation Costs On Percentage Basis

- Wet-Weather Cost
- Dry Weather Cost



Relative Health Care Costs/Benefits On Percentage Basis

- Wet-Weather Benefit
- Dry Weather Benefit



Costs estimated from the average of high and low estimates from the San Diego river and San Luis Rey Watershed CLRPs

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Benefit-Cost (Composite Wet-Dry Study)

- City of San Diego-commissioned study performed by economists at Point Loma Nazarene University (April 2011)
 - Estimated costs to City of San Diego \$3.7B
 - Estimated benefits \$617M
 - Implicit Beach Value (off limit days from 40 to 8)
 - Economic Value (direct spending + multiplier)
 - Health Care Savings (GI, Acute Respiratory Disease, Ear Infection, Eye Infection)
 - Costs outweigh benefits by 6 to 1.



Recommendations

- Do Not Incorporate Bacteria TMDL Numeric Effluent Limitations into this Permit.
- Open a process to revisit the Basin Plan Amendment for Bacteria in Beaches/Creeks that is scientifically sound, incorporates recent and nearly completed studies, has positive cost-benefit to taxpayers.