



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 23 2012

Ivar Ridgeway
Chief, Stormwater Permitting Unit
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Draft MS4 Permit for Los Angeles County (NPDES Permit No. CAS004001)

Dear Mr. Ridgeway:

The following are EPA Region 9's comments on the draft NPDES permit for discharges from the municipal separate storm sewer system (MS4) serving Los Angeles County and incorporated cities therein, which the Los Angeles Regional Board proposed on June 6, 2012. As you know, Region 9 has invested in the development of this draft permit, providing contract support for permit development, attending public workshops, and reviewing and commenting on early drafts of the permit. We are pleased with the draft permit that has emerged from these efforts and we urge the Board to adopt the permit at its meeting in September 2012. We also offer the following comments for the Board's consideration:

A. *Total Maximum Daily Load (TMDL) Requirements*

For the last several years, Region 9 has been encouraging the Regional Boards to incorporate applicable wasteload allocations (WLAs) from TMDLs as numeric effluent limits in MS4 permits. This practice improves the clarity and enforceability of the permits, and ensures consistency with the WLAs. We are pleased to see that applicable WLAs have been identified and incorporated as numeric effluent limits in Appendices K through R to the permit.

We also recognize the permit provides an opportunity for a permittee to demonstrate compliance with interim WLAs via Watershed Management Program Plans providing reasonable assurance that documented best management practices (BMPs) will achieve interim WLAs. We agree with this approach. Based on available information, it is appropriate that compliance with final WLAs (except for those associated with trash TMDLs) will be determined based on achievement of applicable numeric final water quality-based effluent limits and/or final receiving water limits. This is consistent with EPA guidance in its updated memorandum of November 10, 2010 concerning the incorporation of WLAs into stormwater permits, available at:

http://www.epa.gov/npdes/pubs/establishingtmdlwla_revision.pdf. This memorandum

recommends the use of numeric effluent limits when feasible, and notes that BMP-based approaches are appropriate in cases where the administrative record for the permit quantitatively demonstrates the BMPs required by the permit will be sufficient to ensure compliance with the WLAs. This has also been a long-standing EPA policy dating back to EPA's previous 2002 guidance memorandum concerning the incorporation of WLAs into stormwater permits, available at: <http://www.epa.gov/npdes/pubs/final-wwtmdl.pdf>.

We agree that the BMP-based approach this permit takes for trash TMDLs is appropriate given the record that has been compiled on the use of BMPs to address trash, and also agree that numeric limits are appropriate for determining compliance with final WLAs for the rest of the TMDLs incorporated into this permit. These procedures and requirements set forth in the draft permit are consistent with EPA guidance.

Section VI.A 5 of the draft permit notes that all documents submitted to the Regional Board for approval shall be made available for public review and comment for 30 days. This includes the important Watershed Management Programs (WMPs) developed by permittees in which BMPs may be selected to comply with applicable WLAs, along with a reasonable assurance analysis (RAA) to demonstrate compliance with the WLAs. The RAAs will likely be complex and we believe public review is critical to ensuring that any WMP approved by the Board is adequate to ensure compliance with applicable WLAs. We found no mention of public review of WMPs in the fact sheet, and we recommend this be mentioned and stressed to ensure the public is fully aware of this opportunity and to encourage public review. For example, page F-40 of the fact sheet notes that a draft WMP must be submitted to the Board for approval within one year of adoption of the permit, but no mention is made of any opportunity for public review and comment.

We note that separate and somewhat different provisions were developed for the EPA-established TMDLs than for the State-established TMDLs. The fact sheet correctly points out that unlike the State TMDLs, the EPA TMDLs do not include implementation plans or schedules, but they do typically include implementation recommendations. We believe the Board has discretion in developing permit requirements for the EPA TMDLs, and we believe the draft permit requirements are appropriate for the EPA TMDLs, and consistent with the implementation recommendations. EPA also supports the requirement of Watershed Management Program Plans, with the shortest possible implementation schedule, to achieve WLAs defined in the EPA-established TMDLs. EPA further supports language concluding that if the Board determines a plan or schedule is inadequate, then compliance with the numeric WLAs and water quality objectives, as defined in the TMDL, must be met immediately. We believe such provisions will best assure water quality improvements. To reinforce the permit expectations as we understand them, we'd suggest the following specific changes:

- Page 114, section VI.E.3. next to last sentence should be revised to "In lieu of inclusion of numeric water quality based effluent limitations at this time, this Order requires the Permittees subject to WLAs in USEPA established TMDLs to propose and implement best management practices (BMPs) that will be effective in achieving compliance with USEPA established numeric WLAs."

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- Page 115, section VI.E.3.c.ii. should be revised to: "A detailed time schedule of specific actions the Permittee will take in order to achieve compliance with the applicable WLA."

B. *Low Impact Development (LID) Requirements*

As we've pointed out previously, implementation of LID requirements in MS4 permits is one of Region 9's priorities, along with implementation of TMDL requirements. And as in the case of TMDLs we are seeking clear, measurable LID requirements in MS4 permits to ensure enforceability of the requirements. We have reviewed the LID requirements of the proposed permit and we concur with these requirements. Importantly, we note that numeric sizing criteria for a design storm to be managed via LID have been included in the draft permit (section VI.D.6.c.i.(2)) which are comparable to other recent MS4 permits adopted in the State.

To a considerable degree, the LID requirements of the proposed Los Angeles County MS4 permit were derived from the requirements developed for the Board's MS4 permit for Ventura County which was adopted in 2010. However, there are also a few differences based on new information which has become available since 2010 and as discussed below, we would concur with the changes made from the Ventura County MS4 permit.

First, we note that the draft Los Angeles County MS4 permit omits the provision in the Ventura County permit which allows the runoff from 5% of the effective impervious area (EIA) of a new development to be excluded from the LID management requirements. We found the EIA concept to be confusing to many parties and excluding 5% of the EIA makes little difference from an engineering standpoint. The removal of this EIA provision will also align the Los Angeles County MS4 permit with other recent MS4 permits such as the North Orange County MS4 permit adopted by the Santa Ana Regional Board in 2009 (NPDES permit No. CAS0108740) in which the runoff from the full design storm must be managed using LID techniques. By requiring LID management of the full design storm runoff, the Los Angeles County permit will also be somewhat more protective of water quality than the Ventura County permit.

We support provisions in the draft Los Angeles County permit which provide specificity on the implementation of LID, for example Attachment H's Bioretention/Biofiltration Design Criteria. This is an improved approach over the Ventura County permit's reliance on a Technical Guidance Manual which had to be updated subsequent to issuance of the Ventura County permit to provide these design criteria. By providing specifications in the permit the draft Los Angeles County permit provides clear expectations to the public on how the LID requirements will be implemented and eliminates the delays associated with reaching agreement on a Technical Guidance Manual.

Another difference from the Ventura County permit is that special alternative compliance provisions have been included in the Los Angeles County permit which allow the use of offsite regional groundwater recharge sites without a showing of LID technical infeasibility onsite (section VI.D.6.c.iii). The benefits of increased stormwater infiltration for

the purpose of the groundwater recharge in Southern California have been highlighted in several recent studies such as the 2010 Los Angeles Basin Water Augmentation Study, available at:

http://watershedhealth.org/Files/document/522_WAS_StrategyDocument_web.pdf and NRDC's 2009 study entitled "A Clear Blue Future: How Greening California Cities Can Address Water Resources and Climate Change in the 21st Century." We did not find an explanation in the fact sheet for the special provisions related to groundwater recharge; we suggest adding an explanation, citing studies such as those mentioned above. These studies show the benefits stemming from increased groundwater recharge in Southern California would be substantial, and we believe they merit the special consideration provided in the draft permit. However, we would recommend that the permit limit this alternative compliance option to recharge sites where the groundwater can actually be used for a beneficial purpose. To this end, we'd suggest the following specific revision:

- Page 70, section VI.D.6.c.ii.(1) should be revised to, "In instances of technical infeasibility or where a project has been determined to provide an opportunity to replenish regional ground water supplies at an offsite location where ground water can be used for beneficial purposes, each Permittee may..."

Also, we have a minor suggestion to clarify the circumstances where technical infeasibility exists:

- Page 71, section VI.D.6.c.ii.(2)(d) should be revised to, "Brownfield development sites where infiltration poses a risk of causing pollutant mobilization."

Note also that the citation on page 71 at the end of section VI.D.6.c.ii.(3) should be "VI.D.6.c.i."

We support the option for achieving compliance via implementation of Offsite Projects which Retrofit Existing Development (page 72, section VI.D.6.c.iii.(3)). This provides added flexibility to the permittees as a means for complying with LID requirements, and has the potential of achieving valuable water quality benefits.

In addition to the provisions in the LID requirements, we also support the provisions on page 94 (section VI.D.8.d) requiring the development of an Inventory of Existing Development for Retrofitting Opportunities. These provisions are similar to those in MS4 permits issued by the San Diego Regional Water Quality Control Board, and should result in valuable consideration of retrofit projects that can contribute to water quality improvements. They are also supported by EPA's 2010 MS4 Permit Improvement Guide (EPA 833-R-10-001) which recommends such provisions be considered.

Lastly, there are three documents cited on page F-62 of the fact sheet where a reference citation was not included – the study by "Hawley et al.", the USGS study and the Grand River TMDL. We suggest footnotes which would provide the reference information.

C. *Receiving Water Limitations*

We understand that concerns have been raised regarding the receiving water limitations (RWL) language (Section V.A) in the draft permit. We would note that the State Board adopted standard RWL language to be used in all California MS4 permits in WQ Order 99-05 dated June 17, 1999. The State Board provided further clarification of its intent in WQ Order 2001-15, but it generally retained the substance of WQ Order 99-05. WQ Order 99-05 also allowed minor variations in the language to ensure consistency with the terminology in a particular permit. We have reviewed the RWL language in the draft MS4 permit for Los Angeles County and we believe it is consistent with WQ Order 99-05, and we would urge the Regional Board to retain the proposed language in the final permit. We also believe the permit is consistent with the Clean Water Act as interpreted by the Ninth Circuit Court of Appeals in *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, in which the Court determined that the Board has discretion in setting these requirements.

We also understand that concerns have been raised regarding compliance determinations with RWLs and WLAs under the proposed permit, and that concerns have been raised about requiring instream/receiving water monitoring. First of all, we support instream as well as outfall monitoring since they both may provide useful information; both are also well established and supported by EPA's 1990 Phase I stormwater regulations (40 CFR 122.26(d)(2)(iii)(D)) and EPA's Part 2 MS4 permit application guide (EPA 833-B-92-002). NPDES regulations at 40 CFR 122.44(i)(1) also provide broad authority to the Board in determining monitoring requirements, including "other measurements as appropriate" (40 CFR 122.44(i)(1)(iii)). Lastly, we believe the fact sheet provides a solid rationale for the instream monitoring which is consistent with the applicable regulations and EPA guidance on this matter.

Section II.E of Attachment E (Monitoring and Reporting Program) summarizes how compliance determinations would be made, and what the points of compliance would be; we support the draft permit on this matter. NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) require that NPDES permits be consistent with assumptions and requirements of applicable WLAs. We believe it is appropriate for the Board to incorporate the WLAs as they were adopted, including provisions for compliance determination.

Section II.E of Attachment E also notes that instream monitoring locations may be used to assess compliance with the RWL requirements of the permit. However, the discussion in the fact sheet (Section XIII.C) clarifies that the Board would use outfall monitoring in conjunction with instream monitoring to identify particular MS4s which may be responsible for exceedances at the instream location. As such, we believe the concerns about the permit's compliance determinations are not warranted.

D. *Non-Stormwater Discharges*

We support the draft permit's approach for regulating non-stormwater discharges. We've heard criticism of these provisions on the grounds that they are somehow inconsistent with the Clean Water Act. Section 402 (p)(3)(B)(ii) requires that MS4 permits "shall include

a requirement to effectively prohibit non-stormwater discharges into the storm sewers.” The draft permit implements this statutory provision by a number of means, including comparison of effluent concentrations to non-stormwater action levels. We find that the approaches used in the draft permit are appropriate and practical means to implement the CWA’s requirement that non-stormwater discharges into the MS4 are effectively prohibited. We also believe they are consistent with NPDES regulations at 40 CFR 122.26(d)(2)(iv)(B) which describe what a stormwater management program should include to address non-stormwater discharges.

We understand that concerns have been raised specifically on Section III.A.1 of the draft permit which requires that the permittee prohibit certain non-stormwater discharges “through” the MS4 while Section 402(p)(3)(B)(ii) of the Clean Water Act requires that the permittee prohibit discharges “into” the MS4. We support the Board’s proposed language on this issue. We would note that the preamble to EPA’s 1990 stormwater regulations (55 FR 47995) itself uses the word “through” in describing the discharges which are to be prohibited. We believe this is in recognition of the fact that a discharge “into” the MS4 is tantamount to a discharge “through” the MS4 to receiving waters since the principal purpose of an MS4 is conveyance of water.

We also support the exception to the non-stormwater discharge prohibition for temporary discharges authorized by USEPA pursuant to CERCLA (page 26, Section III.A.1.b.). EPA Region 9 worked closely with LA Regional Board staff on this provision. These discharges are authorized in narrow circumstances when an alternative means for handling these waters is not practical in the performance of necessary actions to remediate contaminated groundwater. This by no means results in any expansion of CERCLA liability for permittees as has been alleged during public workshops.

E. Watershed Management Programs

We support the permit’s establishment of voluntary Watershed Management Programs. However we have two specific comments about the draft permit’s provisions in this area.

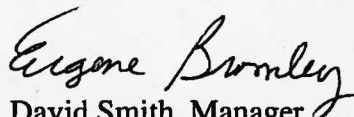
- Page 51, Section VI.C.3.b. iv.(1)(c) should be revised to: “If the Permittee(s) elects to eliminate a control measure identified in Part VI.D.4 to Part VI.D.9 because that specific control measure is not applicable to them, the Permittee(s) shall provide a justification for its elimination.”
- Page 55, Section VI.C.6.b.ii. should be revised to clarify that the reference to modifying compliance deadlines or interim milestones does not apply to deadlines or milestones associated with TMDLs, but rather applies to new deadlines and milestones that are not including in this permit, but are developed pursuant to the Permittee(s)’ Watershed Management Program.

We appreciate the opportunity to provide comments on the draft permit. It’s been many years since the Los Angeles County MS4 permit was last reissued in 2001, and much

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has happened since then, particularly the approval of a large number of TMDLs with applicable WLAs. While this necessarily complicates the 2012 permit, it also provides a major opportunity for water quality improvement via the implementation of these TMDLs. Our understanding of the benefits of LID has also increased since 2001 and this proposed permit provides another substantial opportunity of water resource benefits. The process for the development of the new draft permit has also been lengthy, but we believe the permit is ready for adoption and again we urge the Board to adopt the permit at its September 2012 meeting. If you would like to discuss this matter further, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,


for David Smith, Manager
NPDES Permits Office (WTR-5)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 15 2014

Mr. Ivar Ridgeway
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: Draft MS4 Permit for the City of Long Beach (Permit No. CAS004003)

Dear Mr. Ridgeway:

The following are EPA Region 9's comments on the draft NPDES permit (permit No. CAS004003) for discharges from the municipal separate storm sewer system (MS4) serving the City of Long Beach, which the Los Angeles Regional Board released for public comment on November 22, 2013.

We are supportive of many aspects of the draft permit. For example, the draft permit's Planning and Land Development Program (section VII.J) contains valuable provisions for ensuring that when new development and redevelopment activities are planned there are efforts to reduce pollutant impacts from impervious surfaces and make beneficial use of stormwater. We also strongly endorse the Public Agency Activities Program, which incorporates a requirement to develop an Inventory of Existing Development for Retrofitting Opportunities (section VII.K.4). We're also supportive of the draft permit's incorporation of TMDL Waste Load Allocations (WLAs) as numeric effluent limits (section VIII). In addition, we support the monitoring program (Attachment E), particularly the requirement for outfall monitoring in addition to instream monitoring since this will help identify which outfalls may be contributing to exceedances of WLAs or receiving water limitations. Finally, we support the watershed-based approach used in the permit (section VII.C) which we believe will maximize water quality improvement overall by ensuring that best management practices are appropriately customized to the needs of individual watersheds.

Although we're strongly supportive of much of the draft permit, we have concerns with three areas, each of which we raised in testimony at the November 8, 2012 adoption hearing for the Los Angeles County MS4 permit. These concerns, and our recommendations to address them, are discussed below:

A. *Compliance with TMDL-based Water Quality-Based Effluent Limits Via Retention of the 85th percentile, 24-Hour Storm*

Section VIII.F.1.d of the draft permit provides that a permittee implementing an enhanced watershed management plan (EWMP) will be deemed in compliance with applicable water quality-based effluent limits associated with TMDLs if the runoff from

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the 85th percentile 24-hour storm within drainage areas covered by the EWMP is retained. While we recognize the multiple benefits of retaining stormwater, we're concerned that this retention may not necessarily attain the water quality benefits associated with the incorporated TMDLs. Among our concerns are that retention facilities designed to retain the 85th percentile, 24-hour storm could be sited within drainage areas in locations that do not control runoff containing elevated pollutants, and therefore the water quality expectations established by TMDLs may not be achieved. Absent further justification or explanation in the fact sheet of how this retention can be relied upon to achieve the water quality benefits associated with the TMDLs, we recommend that section VIII.F.1.d of the draft permit be deleted.

B. Compliance with Receiving Water Limitations (RWLs) Via a WMP or EWMP

Pursuant to section VII.C.1.d of the draft permit, a permittee is deemed to be in compliance with RWLs upon notification of the Regional Board that the permittee intends to develop and implement a watershed management plan (WMP) or EWMP. We would prefer retaining the RWLs language consistent with State Board WQ Order 99-05. However, we could accept an alternative in which a permittee would be deemed in compliance with RWLs *after* approval of a WMP or EWMP by the Regional Board. Such a provision was drafted and considered by the San Diego Regional Board for the San Diego Regional MS4 Permit (NPDES permit No. CAS0109266), but was ultimately not included in the final San Diego permit adopted in May 2013. We recommend that such a provision be included in the City of Long Beach permit (if the Regional Board deviates from the requirements of WQ Order 99-05). A permittee would be deemed in compliance with RWLs only after approval of a WMP or EWMP, since a much clearer picture of the path to ultimate compliance would be available at that time.

C. Implementation of Minimum Control Measures (MCMs)

The provisions in section VII.D.1 of the draft permit concern the timing for implementation of MCMs. If the City of Long Beach chooses not to implement a WMP or EWMP, the permit requires implementation of the permit's updated MCMs within six months of the permit's effective date. However, if the City of Long Beach chooses to develop a WMP or EWMP, only the BMPs required by the previous 1999 permit would be required pending approval of the WMP or EWMP by the Regional Board. To avoid delays in the implementation of updated MCMs, it's our preference that section VII.D.1.ii of the draft permit be revised to require implementation of the updated MCMs within six months of the effective date of the permit regardless of whether the City of Long Beach elects to develop a WMP or EWMP. We recognize that the City of Long Beach's circumstances will lessen some delays in the implementation of updated MCMs. For example, the fact that the City of Long Beach adopted a protective Low Impact Development Ordinance in November, 2010 means that there will not be a significant impact if implementation of the new permit's Planning and Land Development Programs is delayed. Also, we understand that the City of Long Beach is currently participating in

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the preparation of WMPs with permittees under the LA County MS4 permit which will be completed relatively soon, and therefore there may not be lengthy delays in implementation of updated MCMs for drainages covered by these WMPs. We recommend seeking means for ensuring that the outdated 1999 MCMs can be replaced by updated provisions as soon as is practical.

We appreciate the opportunity to provide our views on the draft permit. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth Sablad".

Elizabeth Sablad, Acting Manager
NPDES Permits Office (WTR-5)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 20 2014

Adam Fischer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501.

Re: Draft MS4 Permit for Orange County (Permit No. CAS618030)

Dear Mr. Fischer:

The following are EPA Region 9's comments on the draft NPDES permit (permit No. CAS618030) for discharges from the municipal separate storm sewer system (MS4) serving the portion of Orange County under the jurisdiction of the Santa Ana Regional Water Quality Control Board (Regional Board), which the Regional Board released for public comment on May 2, 2014. In an email dated January 31, 2014, we provided comments on an earlier "administrative draft" of this permit. We appreciate the opportunity to provide early input during the permit development process. However, we are disappointed that the May 2, 2014 draft permit contains problematic new provisions allowing for compliance with water-quality provisions based on Permittee submittal of draft plans (or providing a notice of intent to submit a plan) to the Executive Officer. Following below are our comments on the latest draft permit.

A. *Total Maximum Daily Load (TMDL) Requirements*

We have concerns with the draft permit's new options for complying with permit requirements associated with approved TMDLs upon the Permittees' written notification to the Executive Officer of their intent to develop a plan to comply with applicable wasteload allocations (WLAs). Each of the TMDLs listed in Appendices B through H of the draft permit was incorporated into the Santa Ana Regional Board's 2009 Orange County MS4 Permit (R8-2009-0030), so implementation of these TMDLs should be ongoing. We'd prefer that the draft permit be revised to retain the same approach for compliance with WLAs as the 2009 permit, and as is incorporated into the San Diego Regional Board's 2013 Regional MS4 permit (NPDES Permit No. CAS0109266). It's our conclusion that basing TMDL compliance on plans limits enforceability and makes it difficult to confirm that the TMDL water quality targets are being attained. If a plan-based compliance approach is to be included, it's important for the draft permit to be revised to include a more rigorous analysis including how specifically identified BMPs will directly result in achievement of WLAs, and the expectations that interim milestones be provided to track progress towards achieving WLAs. Also, contrary to the draft permit, this option for compliance should only be available upon approval of the plan (following opportunity for public comment) by the Executive Officer.

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Per Clean Water Act and federal regulations at 40 CFR 122.44 regarding TMDLs, permit language must be modified in several places to accurately describe that Permittee's discharges must comply with water quality-based effluent limits (WQBELs), not the TMDL WLAs. Specifically, we recommend/request these language changes be made within permit section XVIII – TMDL Implementation and in each of the TMDL Appendices B-H. For example, the responsible Permittees must comply with WQBELs established in this permit; those WQBELs are consistent with WLAs within approved TMDLs.

In our emailed comments of January 31, 2014, we expressed concern that compliance with WLAs (established as WQBELs in the permit as noted above) would be determined in accordance with a schedule (yet-to-be determined) where such determinations could be as infrequent as once every five years. We had recommended WLA compliance determinations at least once/year; we noted this would consistent with the implementation language in at least one TMDL adopted by the Regional Board (organochlorine compounds TMDL). The monitoring requirements of the latest draft permit (Attachment A) have been revised to require monitoring consistent with TMDL assessment periods, but do not specify in detail the monitoring frequency that would be necessary for consistency. To clarify the requirements and to avoid any misunderstandings of the TMDL requirements, we recommend that the permit either include the monitoring frequency that would be required for consistency with each TMDL, or direct the Permittee to a specific document where it could be found.

Furthermore, the permit should be revised to include action levels as part of the permits monitoring and reporting program and, if appropriate, the Permittees' water quality improvement plans. The goal of including both non-stormwater and stormwater action levels is to guide implementation efforts and measure progress towards the protection of water quality and designed beneficial uses of the state from adverse impacts caused or contributed to by MS4 discharges. Notably, action levels were included in the Riverside County MS4 permit (2010, Santa Ana Regional Board) and the San Diego Regional permit (2013).

Section XVIII.B.4 of the draft permit would allow exceedances of a WLA at a frequency that is less than or equal to a site-specific exceedance frequency found in the State's policy guide for developing the CWA section 303(d) list. If retained, this provision should be further discussed and supported in the fact sheet. Our understanding is that the exceedance frequency in the section 303(d) listing guide does not affect the applicability of approved WLAs, and would not justify the proposed exceedances that would be allowed under the permit. Absent adequate justification for section XVIII.B.4, we recommend it be removed from the permit.

The draft permit does not currently include any requirements related to TMDLs that may be approved during the term of the permit. To expedite implementation of additional controls that may be necessary for compliance with such TMDLs, we recommend the permit include a provision similar to section O of the 2012 MS4 permit

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for the City of Salinas (permit No. CA0049981) issued by the Central Coast Regional Board. The Salinas permit requires development and submittal within one year of final TMDL approval of a plan for complying with newly approved TMDLs. This is preferable to waiting for the next permit renewal to incorporate newly approved TMDLs. We understand that the Santa Ana Regional Board is currently developing a TMDL for selenium for the Newport Bay Watershed; our recommended provision would expedite compliance with the selenium TMDL and any others that may be approved during the term of the permit.

In Appendix G, we recommend that the second paragraph be modified to clarify that the metals and selenium TMDLs were only promulgated by EPA, and were not developed nor adopted by the Santa Ana Regional Board. We recommend the following edits to the paragraph:

“The WLAs in this Appendix are based on the Toxic Pollutants (Metals and Se) TMDLs. ~~The Toxic Pollutants TMDL has been approved by Santa Ana Regional Water Quality Control Board, the State Water Resources Control Board, the Office of Administrative Law (“OAL”) and USEPA. The Toxic Pollutants TMDL was adopted by the Santa Ana Regional Water Quality Control Board in Resolution No. R8-2003-0039. The~~ metals and Se TMDLs were promulgated by USEPA on June 17, 2002.”

B. New Development (Including Significant Redevelopment)

Section XII.A.7 requires the Principal Permittee to submit retrofit studies. While this is a step in the right direction, it falls far short of the retrofit provisions included in the San Diego Regional Board’s Regional MS4 permit (CAS019266). We recommend incorporation of the San Diego permit’s section II.E.5.(e)(1) “Retrofitting and Rehabilitating Areas of Existing Development.” The San Diego permit requires each Co-permittee to identify areas of existing development as candidates for retrofitting, focusing on areas where retrofitting will address pollutants and/or stressors that contribute to the highest priority water quality conditions. This more comprehensive approach will better identify areas within the built environment where retrofits would result in water quality improvements. The San Diego permit also requires a strategy to facilitate implementation of projects identified as potential candidates for retrofits, which is lacking in the draft Orange County permit. Moreover, many of the potential retrofit BMPs (such as bioretention) would provide additional benefits such as groundwater recharge which would help alleviate current and future drought conditions; this factor increases the importance of an effective retrofit program.

Section XII.K discusses off-site treatment controls. We recognize that in some cases off-site projects can effectively address the post-construction control requirements for new development and significant redevelopment projects. This is particularly the case where off-site controls are located to optimize infiltration to replenish groundwater

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supplies. However, it is necessary that water quality protections are in place at the site of the triggering development/redevelopment project, and the draft permit should be revised to make this explicitly clear. We recommend the Los Angeles County MS4 permit (CAS004001), which effectively addresses this issue in section VI.D.7.c.iii(7) by specifying Water Quality Mitigation Criteria that must be met for New and Redevelopment Projects that have been approved for offsite projects.

It is not clear whether regional or sub-regional biotreatment facilities would be required to treat 1½ times the capture volume required for retention facilities, as would be the case when on-site biotreatment replaces on-site retention. This requirement should be included in the permit. We further recommend that in situations where there may be a choice in using off-site retention or off-site biotreatment that the permit include a preference for retention (similar to the preference for retention over biotreatment for on-site controls).

The draft permit appears to lack any requirements for off-site mitigation when on-site LID is determined to be infeasible and regional or sub-regional facilities are not being used. We recommend that mitigation using off-site LID be required for any portion of the design capture volume for which retention or biotreatment is determined to be infeasible onsite. Such a requirement would be consistent with the 2012 Los Angeles County permit.

Finally, section XII.L of the draft permit provides for a waiver of structural controls under certain circumstances. For example, a waiver could be available if the costs are shown to disproportionately outweigh the benefits. The waiver provisions are not explained in the fact sheet and further explanation and justification should be included. Given the experience throughout California implementing LID controls pursuant to MS4 permits, which has shown the widespread feasibility of implementing LID measures in connection with new development and redevelopment projects, we're very skeptical that this waiver provision is necessary.

C. Receiving Water Limitations

In our emailed comments of January 31, 2014, we expressed support for the receiving water limitations (RWLs) language that had been included in the administrative draft. At the time, this language closely tracked State Water Board WQ Order 99-05 and the Regional Board's 2009 MS4 permit for Orange County. Unfortunately, the May 2, 2014 draft permit (section IV) includes a new provision under which a Permittee would be deemed in compliance with RWLs upon submittal of a draft plan for compliance to the Executive Officer. As an alternative to this new draft permit language, it's our preference that the permit retain the same RWLs language contained in your 2009 Orange County MS4 permit. As you are no doubt aware, at a November 2012 workshop, the State Water Board indicated it may consider revising WQ Order 99-05. The State Board has recommended that MS4 permits include a permit reopener to address potential revisions

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to WQ Order 99-05. We suggest incorporation of such a reopener in the Orange County permit; section II.H.4.a of the San Diego permit provides appropriate language.

We are aware that while the State Board considers revisions to WQ Order 99-05, some stakeholders have been urging Regional Boards to develop new approaches for determining how RWLs compliance is determined. While our strong preference is to stick with the approach used in your 2009 permit, we have reviewed one alternative that we could support. During the development of the San Diego Regional Board's Regional MS4 permit, RB9 staff developed an option (referred to as Option 2) that would have made use of detailed Water Quality Improvement Plans to demonstrate measurable progress to achieve RWLs (included in the RB9 staff's Revised Tentative Order posted March 27, 2013). Under Option 2, after Water Quality Improvement Plan approval, its implementation would be the vehicle for achievement of RWLs. Ultimately at its May, 2013 hearing, the San Diego Regional Board chose not to adopt Option 2, and instead, with EPA's full support, adopted its Regional MS4 permit with RWLs language consistent with WQ Order 99-05. The Los Angeles MS4 permit also lays out a thorough, rigorous planning process for determining compliance with RWLs. However, we have gone on record as opposing this approach used by the Los Angeles Regional Board, given that the alternative compliance approach is available before the Plans are approved.

Unlike the San Diego Regional Board's staff proposal (Option 2) or the Los Angeles County MS4 permit, the draft Orange County permit does not provide necessary details on Permittee programs to demonstrate rigorous efforts to achieve RWLs. The deficiencies in the draft permit include the absence of measurable interim milestones and modeling efforts supporting assurances that BMPs will achieve RWLs. Again, our preference is to retain the RWLs language of the 2009 permit, but if a plan-based compliance approach is being seriously considered it should use the methodology developed by the San Diego and Los Angeles Regional Board staff, and should be available for compliance purposes only after plan approval.

D. Other Comments

1. Whole Effluent Toxicity (WET) Requirements

In our emailed comments of January 31, 2014, we had recommended that the Orange County MS4 permit include WET requirements (using EPA's Test for Significant Toxicity (TST) procedure) modeled after those in the 2012 Los Angeles County MS4 permit. The Los Angeles County permit requires tests using 100% effluent and 100% receiving water. However, the Orange County permit requires tests on a series of dilutions (section F.3 of Attachment A), and the selection of these dilutions should be explained in the fact sheet. We note the dilution series in the draft permit was commonly used in the WET data analysis methods used prior to the TST and may have been inadvertently carried over from previous permits.

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2. Monitoring Program

The list of parameters in the monitoring program for pesticides appears incomplete (Table 4 of Attachment A), in that only a limited number of organophosphate pesticides would be sampled. We recommend the list be broadened to include a wider variety of pesticide compounds in current use, such as pyrethroids (e.g., bifenthrin, cypermethrin, esfenvalerate, gamma cyhalothrin, permethrin, etc.) and neonicotinoides (e.g., clothianidin, imidocloprid, thiamethoxam).

Section II.D of Attachment A requires monitoring at representative "MS4 outfalls" but does not provide any guidance concerning the required number of locations to be sampled, or the specific locations themselves. We recommend the permit at least clarify that representative sampling locations must be selected that would allow a compliance determination with each applicable WLA. The fact sheet also notes that the intent of the permit is largely to continue the existing monitoring program, and it appears the Regional Board has generally been satisfied with the program in previous years. Nevertheless, we recommend the fact sheet further describe the program (e.g., number and location of sampling sites, frequency of sampling) to provide the public with a better sense of the scope of the program.

Based on information contained in Orange County's 2011-2012 Unified Annual Report, the County did not adequately compare dry weather receiving water composite sample results against the California Toxics Rule (CTR), specifically the chronic criteria, as required by section III.1(a) of the monitoring and reporting program requirements of the 2009 permit. Sampling results reported by Orange County were compared to the CTR acute toxicity criteria only. The lack of adequate sampling and/or analysis of dry weather composite samples against the chronic CTR criteria limits the County's ability to identify trends, potential sources, and appropriate responses to exceedances of applicable water quality standards. For the new permit, the Regional Board should ensure that the County clearly understands its responsibilities on this matter.

Finally, we note that bacteria sampling (section II.I.1.c of Attachment A) is not allowed on days when rain has occurred. The basis for this condition should be explained in the fact sheet.

3. Public Review of Updated Monitoring Program

Section II.B.6 of Attachment A provides that the Executive Officer will provide the opportunity for public comment on changes to the initial monitoring program which is submitted, but this opportunity seems missing for the initial submittal itself. We recommend the Executive Officer ensure such an opportunity for the initial submittal as well since it will likely be of greater interest than any changes in subsequent years.

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We appreciate the opportunity to provide our views on the draft permit. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene Bromley".

for David Smith, Manager
NPDES Permits Office (WTR-5)

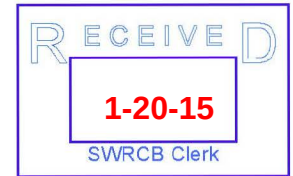


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 20 2015



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor (95814)
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments to A-2236(a)-(kk)

Dear Ms. Townsend:

The following are EPA Region 9's comments on the State Water Board's draft WQ Order released on November 21, 2014, responding to the petitions (SWRCB/OCC files A-2236(a) through (kk)) submitted challenging NPDES permit No. CAS004001. This permit was issued in November 2012 by the Los Angeles Regional Board and authorizes discharges from the municipal separate storm sewer system (MS4) serving most of Los Angeles County. Region 9 offers the following comments on certain aspects of the Order.

A. "Safe Harbor" During the Planning Phase for a WMP/EWMP

Section VI.C.3.b of the LA MS4 permit provides that permittees are deemed in compliance with receiving water limitations (RWLs) upon notification to the Regional Board of their intent to develop a watershed management program (WMP) or enhanced watershed management program (EWMP). In our testimony at the November 2012 adoption hearing for the permit (and in a subsequent August 14, 2013 letter to the State Water Board), we recommended a change in the timing of when a permittee would be deemed in compliance. Rather than being deemed in compliance upon notification of intent to prepare a WMP/EWMP, we recommended that a permittee be deemed in compliance only after approval of a WMP/EWMP.

Section II.B.6 of the draft WQ Order supports the LA MS4 permit with regards to the timing of when the "safe harbor" period would begin. Establishing a safe harbor during this planning phase is not warranted. The requirement that LA County permittees meet RWLs was in place for over eleven years prior to the issuance of this permit. We disagree that permittees should be considered in compliance with these limits solely based on a notification of intent to prepare a plan.

A provision consistent with our recommendation was drafted as one option for the draft Regional MS4 permit (NPDES permit No. CAS0109266) proposed by the San Diego Regional Board in April 2013. The San Diego Regional Board chose to stick with

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an approach for compliance with RWLs that closely aligned with State Board Order WQ 99-05 (i.e., not this draft WQ Order's proposed option). In conclusion, the San Diego Board's option for finding permittees in compliance with RWLs only when a plan is approved should be incorporated into the State Water Board's final WQ Order responding to the LA MS4 permit petitions.

B. Compliance with RWLs Via Retention of the 85%, 24-Hour Storm for Drainage Areas with EWMPs

Section VI.E.2.e.i.4 of the LA MS4 permit provides that for drainage areas where a EWMP is developed, retention of the runoff from the 85%, 24-hour storm would constitute compliance with applicable Water Quality Based Effluent Limits (WQBELs) and RWLs for pollutants associated with TMDL Waste Load Allocations (WLAs). We raised concerns with this provision in our testimony at the November 2012 adoption hearing. It has been a long-standing EPA policy that where a MS4 permit does not incorporate TMDL WLAs as numeric limits, the permit's administrative record must demonstrate that specified control measures will be sufficient to ensure compliance with WLAs. In a December 4, 2012 letter, we requested that the Los Angeles Regional Board identify documents in the permit's administrative record which are the basis for the conclusion that the specified retention would result in achieving WLAs. Based on the Regional Board's April 11, 2013 response, we do not believe that the permit's record supports the conclusion that this retention will result in achievement of WLAs.

The draft WQ Order in section II.B.5 recognizes that the LA MS4 permit does not verify that TMDL-specific limitations will be met as a result of retention of the 85%, 24-hour storm. The draft WQ Order addresses this issue by requiring the submittal of a plan of additional control measures if the specified volume is retained, but water quality monitoring shows that RWLs and WQBELs associated with TMDLs are not in fact being achieved. While this is a step in the right direction, we are concerned that only requiring submittal of a plan could lead to an ineffective iterative process without any assurance that water quality will be protected. We recommend that the provision be strengthened to specify that the expectations for this plan must include: (1) a quantitative analysis demonstrating that proposed additional control measures will result in attainment of WLAs, and (2) a provision for the Executive Officer to have the option to require strict compliance with numeric WLAs if continued progress is not being made towards achieving these water quality limitations.

C. Applicability of the WQ Order to All Regional Boards

We note that some commenters on the draft WQ Order recommended that the State Water Board require that all Regional Boards follow the WMP/EWMP approach in the LA MS4 permit when issuing MS4 permits. As drafted, the proposed WQ Order (section II.B.7) directs all Regional Boards to consider the approach in the LA MS4 permit, but does not require its use. We believe it would be premature and inappropriate

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to require the LA MS4 permit approach throughout the State, especially considering the previous two issues we've identified in this letter.

We appreciate the opportunity to provide our views on the draft WQ Order. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Section at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith". The signature is fluid and cursive, with the first name "David" and last name "Smith" clearly distinguishable.

David Smith, Manager
NPDES Permits Section (WTR-2-3)