



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", with a stylized, cursive script.

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

