



Date	January 9, 2017
To	Shuka Rastegarpour Environmental Scientist State Water Resources Control Board
From	Ray Tahir TECS Environmental
Subject	Comments On GISP TMDL Compliance Option 1 and 2

Option #1 Issues

This option is undesirable for several reasons. To begin with, the TMDLs adopted by the Los Angeles Regional Board are defective. They were not based on ambient (dry weather) but instead on wet weather conditions. According to State Board Order 2001-15, there is no such thing as a wet weather water quality standard (includes TMDLs). Federal guidance documents refer to water quality standards in ambient terms. This applies to toxic and organic constituents. Next, the TMDLs in question did not follow the State's TMDL listing policy which specifies statistical tests to determine whether a pollutant requires elevation to TMDL status based on exceedance frequency. Beyond this, no reasonable potential analysis has been performed to determine if an industrial discharger (or category of one) has exceeded a water quality standard/TMDL for any of the watersheds/sub-watersheds in Los Angeles County. This is also a federal requirement referenced in USEPA's *NPDES Permit Writer's Manual*. Water quality standards/TMDLs must be established as water quality based effluent limits (WQBELs), which can be numeric or non-numeric. This has not yet been done. Further, the proposed compliance option requires compliance in the receiving water. Although TMDLs are established to protect receiving waters, which can be numeric or non-numeric, industrial discharge compliance must be determined at the outfall (or point of discharge) – not the receiving water. WQBELs are effluent limitations that are placed on outfall discharges. They do not apply to a receiving water. Further, WQBELs can be BMPs and be required in addition to technology-based effluent limitations (T-BELs).

Option #1 requires the implementation of capture, use, infiltrate, evapotranspiration controls. These BMPs controls are expensive, may not be necessary, and pose a challenge to enforcement. This begs the question as to who will be responsible for enforcing these requirements, the Regional Board is municipal permittees? Lastly, Option 1 calls for compliance with non-stormwater discharges that contain pollutants that are subject to TMDLs, including those that are not exempted under the current MS4 Permit. This is an excessive requirement. NPDES permits only require a prohibition of non-stormwater discharges, not controlling them to the same extent as stormwater discharges.

Option #1 fails to comply with federal regulations/guidance. It should be dismissed from further discussion.

Option #2 Issues

Compliance with TMDLs – which as noted above were not properly established -- is to be achieved through an industrial discharger's participation in an approved watershed management program. There is no definition of watershed management program. Does it



mean the enhanced/non-enhanced watershed management programs that are a compliance option specified in the current Los Angeles County MS4 Permit? This option enables compliance with water quality standards/TMDLs by participating in an EWMP or WMP that calls for meeting infiltration requirements based on design storm criteria.

If this is the case, then this option should be shelved for the following reasons: (1) EWMPs/WMPs are under legal challenge from both the enviros and several cities; (2) it is likely that many cities will not propose carrying-over the EWMPs/WMPs because of their cost and are thought to be unfunded mandates (because they are not supported by federal law).

Further, it is difficult to tell the difference between this option and option #1. Both appear to require treatment BMPs, which are likely to be of the infiltration type.

Recommendations

Until the issue with the TMDLs is resolved, it is recommended that the State Board only require BMPs, as non-numeric WQBELs to address TMDLs. The BMPs can be established for each category of industrial discharger. For transportation facilities, for example, BMPs could be established to prevent stormwater/non-stormwater contact with fueling constituents or products containing chemicals. Non-stormwater runoff to the MS4 could be prohibited by requiring diversion to a clarified connected to the sewer system or collected in a sump. If water quality testing at the point of an industrial discharge (on-site or down-stream catch basin) is routinely exceeded then an iterative process should be triggered that could result in requiring low impact development controls.