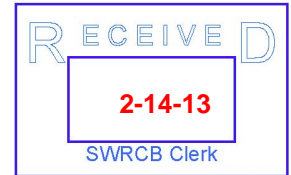




CITY OF
San Fernando
Historic & Visionary

February 13, 2013



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

Subject: Los Angeles Region Bacteria TMDL Basin Plan Amendments

Dear Ms. Townsend:

The City of San Fernando ("City") is pleased to comment on the proposed amendments to the Los Angeles Basin Plan revising coastal bacteria TMDLs. The City has two concerns regarding the amendment. First, each of these TMDLs requires compliance with waste load allocations in the receiving water for MS4 permittees. Second, each also requires compliance with ambient standards. Both of these requirements need to be revised because they are extra-legal for reasons provided below.

1. Compliance with WLAs in Receiving Waters

Both federal stormwater regulations and a recent United States Supreme Court ("Supreme Court") decision assert that compliance with water quality standards (includes TMDLs) for MS4 permittees is determined by measuring outfall discharges -- not in a receiving water.

CFR 40 §122.22, §122.2 and §122.26. CFR 40 §122.22(C)(3) requires effluent and ambient monitoring:

The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameters continues to attain water quality standards.

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"Effluent monitoring," according to Clean Water Act §502, is defined as outfall monitoring:

The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

40 CFR §122.2, defines a point source as:

... the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

In other words, with respect to MS4 permits, the end of the "regulatory line" is in the discharge from the outfall. Receiving waters lie outside the bounds of the MS4 permit. Therefore, any requirement associated with compliance in the receiving water is extra-legal. The burden of the MS4 permit is to attain water quality standards by implementing BMPs and performing other tasks within an MS4.

The Supreme Court, in ruling on Los Angeles County Flood Control District (LACFCD v. NRDC), affirmed a lower court ruling establishing that the point of compliance for MS4 permits is in outfall discharges. This effectively invalidated NRDC's claim that LACFCD had violated the 2001 Los Angeles MS4 permit because of numerous water quality exceedances that were detected in several receiving waters during wet and dry weather through in-stream measurements.

2. Compliance with Ambient Water Quality Standards

The subject bacteria TMDLs, along with others adopted by the Los Angeles Regional Board and approved by the State Board, require ambient monitoring in the receiving water. The issue here is that the term "ambient" is misused to mean wet weather monitoring as well as dry weather monitoring. MS4 permits require attainment of ambient water quality standards. In fact, all water quality standards are ambient standards.

USEPA defines effluent as outfall discharges. Ambient monitoring is defined by USEPA to mean the:

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Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.¹

It is clear that ambient monitoring does not include measurements in the receiving water during a storm event. Outfall monitoring measures discharges against a fixed ambient standard that has been established to protect beneficial uses. It serves no purpose to compare outfall discharges against a non-ambient standard (viz., during a storm event) or base compliance on measurements taken in-stream during a storm event.

3. Recommendations

Delete all references to receiving water monitoring for MS4 compliance or any other purpose and provide a definition of ambient water quality monitoring that is consistent with USEPA's definition. And clarify that attainment of water quality standards is determined by measuring outfall discharges against fixed ambient standards – hopefully developed by the State's surface water ambient monitoring program.

Should you have any questions, please feel free to call me.

Sincerely,



Ron Ruiz
Public Works Director

¹See USEPA Glossary of Terms.